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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 493.

FREDERICK SEYMOUR BARRINGTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED NOVEMBER 12, 1906.

(20458.)

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the Supreme Court of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, at the April term, 1906, thereof, between the State of Missouri, respondent, and Frederick Seymour Barrington, appellant, a manifest error hath happened to the great damage of the said Frederick Seymour Barrington, appellant, as aforesaid, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., not exceeding thirty days from the date of the citation in said cause, in the said Supreme Court, to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 30th day of June, in the year of our Lord one thousand nine hundred and six.

b Issued at office in the city of Jefferson, with the seal of the Circuit Court of the United States, for the Western District of Missouri, Central Division, dated as aforesaid.

[SEAL.] H. C. GEISBERG,
Clerk Circuit Court United States,
Western District of Missouri, Central Division.

Allowed by:

THEODORE BRAU,
Chief Justice of the Supreme Court of Missouri.

c *Return to writ.*

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record, and proceedings in the within case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said Supreme Court, at the city of Jefferson, this 16th day of October, A. D. 1906.

[SEAL.] JNO. R. GREEN, *Clerk.*

(Indorsed:) Filed Jun. 30, 1906. Jno. R. Green, clerk.

d The United States of America to the State of Missouri, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington, D. C., not exceeding thirty days from and after the day this citation bears date, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of Missouri, wherein Frederick Seymour Barrington is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness Theodore Brace, Chief Justice of the Supreme Court of Missouri, this 30 day of June, in the year of our Lord one thousand nine hundred and six.

THEODORE BRACE,
Chief Justice of the Supreme Court of Missouri.

e UNITED STATES OF AMERICA,
Central Division of the Western District of Missouri, ss:

We hereby acknowledge due service of the within citation this 30 day of June, A. D. 1906.

HERBERT S. HADLEY
and JOHN KENNISH,
Attorneys for Defendant in error.

(Indorsed:) Filed Jun. 30, 1906.

JNO. R. GREEN, *Clerk.*

f STATE OF MISSOURI, *sct:*

Be it remembered that heretofore, to wit, on the 24th day of September, 1904, there was filed in the office of the clerk of the Supreme Court of Missouri a transcript in a certain cause wherein the State of Missouri was respondent and Frederick Seymour Barrington was appellant. Which said transcript is in words and figures as follows, to wit:

1 STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered, that at a term of the Circuit Court of the county of St. Louis in the State of Missouri, in the Thirteenth Judicial Circuit thereof, begun and held at the court-house, in the town of Clayton, in said county, on Monday, September 21st, 1903, there were present the honorable John W. McElhinney, judge, Rowland L. Johnston, prosecuting attorney; Edmund C. Hencken, sheriff; F. J. Hollocher, clerk; and A. J. Jones, official stenographer of this court; and the court having been ordered opened for the transaction of business, which was duly proclaimed by said sheriff, thereupon the following proceedings were had, viz:

And now comes Edmund C. Hencken, sheriff of St. Louis county, Missouri, and come also his deputies, John W. Bellairs, Harry W.

Schnecko, and John P. Ossenfort, and in open court take the usual oath prescribed by law, administered by the clerk of this court, before the empanelling of any jury, either grand or petit, for the present term of this court.

Sheriff Edmund C. Hencken returns now into court and names the following persons by him duly summoned from the body of the county to be and appear and serve as grand jurors for the present term of this court, viz: William Knierem, Martin Heintz, Paul Langenbeck, Frank Laturnis, William Hackman, Gottlieb Roth, R. F. Stevens, Henry P. Wolff, Fred Boquet, Aug. W. Gruben, F. H. Krenning, and Julius Goss, all of whom are present. Whereupon the sheriff, on order of the court, doth bring into court the persons held to await the action of said grand jury, namely: Frederick Seymour Barrington, Walter Simon, Oscar Rhodes, and Joseph Woolfolk; and said persons being asked by the court if they have any objections to any of said grand jurors, or any challenges to make, and all replying that they have none, thereupon come the
2 said William Knierem, Martin Heintz, Paul Langenbeck, Frank Laturnis, William Hackman, Gottlieb Roth, R. F. Stevens, Henry P. Wolff, Fred Boquet, Aug. W. Gruben, F. H. Krenning, and Julius Goss, twelve good and lawful men of the county of St. Louis, from which number the court doth select and appoint the said Henry P. Wolff foreman. And being thereupon duly sworn according to law as grand jurors, and duly charged by the court, said grand jurors retire from the bar to consider of their presentments and such other business as may come before them.

FRIDAY, *October 2nd, 1903.*

The grand jury returns now into court, and through its foreman presents the following indictments as true bills, to wit:

STATE OF MISSOURI, *vs.* FREDERICK SEYMOUR BARRINGTON, DEF'T. (and other causes).	Charge: Murder first degree. Endorsed: A true bill. Signed: Henry P. Wolff, foreman.

And said indictment is in words and figures as follows, to wit:

Indictment.

STATE OF MISSOURI,
County of St. Louis, ss:

In the Circuit Court of St. Louis County. September term, 1903.

The grand jurors for the State of Missouri, now here in court, duly empanelled, sworn, and charged to inquire within and for the body of the county of St. Louis and State of Missouri aforesaid, upon their oath present and charge that one Frederick Seymour Barrington, on the 18th day of June, A. D. 1903, at the county of St.

Louis and in the State of Missouri, in and upon one James P. McCann, then and there being, feloniously, willfully, premeditatedly, deliberately, on purpose and of his malice aforethought did make an assault; and with a dangerous and deadly weapon, to wit, a revolving pistol, then and there loaded with gunpowder and leaden
3 balls, which he, the said Frederick Seymour, Barrington, in his hand then and there had and held, at and against him, the said James P. McCann, then and there feloniously, willfully, deliberately, premeditatedly on purpose and of his malice aforethought did shoot off and discharge and with the revolving pistol aforesaid and the leaden balls aforesaid then and there feloniously, willfully, premeditatedly, deliberately on purpose and of his malice aforethought, did shoot, strike, and penetrate and wound him, the said James P. McCann, in and about the vital part of the body of him, the said James P. McCann, in the head and body of him, the said James P. McCann, giving to him, the said James P. McCann, at the county of St. Louis aforesaid and State of Missouri, on the said 18th day of June, 1903, with a dangerous and deadly weapon, to wit, the revolving pistol aforesaid and the gunpowder and leaden balls aforesaid, in and upon the head and body of him, the said James P. McCann, at the county of St. Louis and State of Missouri aforesaid, on the said 18th day of June, A. D. 1903, then and there of the mortal wounds aforesaid instantly died. And so the grand jurors, upon their oath aforesaid, do say that the said Frederick Seymour Barrington, him, the said James P. McCann, in the manner and by the means aforesaid, feloniously, willfully, deliberately, on purpose and of his malice aforethought did kill and murder, against the peace and dignity of the State.

And the grand jurors aforesaid, on their oath aforesaid, do further present and charge that the said Frederick Seymour Barrington on the 18th day of June, A. D. 1903, at the county of St. Louis in the the State of Missouri aforesaid, with force and arms and with great violence in and upon one James P. McCann then and there being, feloniously, willfully, premeditatedly, deliberately, and of his malice aforethought did make an assault, and that him, the said Frederick Seymour Barrington, then and there feloniously, premeditatedly, deliberately, willfully, and of his malice aforethought did take the said James P. McCann into both the hands and arms of him
4 the said Frederick Seymour Barrington, and did then and there feloniously, premeditatedly, deliberately, willfully, and of his malice aforethought cast, throw, and push the said James P. McCann into a certain pond there situate wherein the said pond there was a great quantity of water, by means of which said casting, throwing, and pushing of the said James P. McCann into the pond aforesaid by the said Frederick Seymour Barrington in manner and form as aforesaid, he, the said James P. McCann, in the pond aforesaid, with the water aforesaid, was then and there choked, suffocated, strangled, and drowned, of which said choking, suffocation, strangling, and drowning he, the said James P. McCann, then and there at the county of St. Louis, in the State of Missouri aforesaid, on the 18th day of

June, A. D. 1903, instantly died. And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Frederick Seymour Barrington, him, the said James P. McCann, in the manner and by the means aforesaid feloniously, willfully, deliberately, premeditatedly, and of his malice aforethought did kill and murder against the peace and dignity of the State.

And the grand jurors aforesaid, on their oath aforesaid, do further present and charge that the said Frederick Seymour Barrington on the 18th day of June, A. D. 1903, at the county of St. Louis and State of Missouri, in and upon the said James P. McCann then and there being feloniously, willfully, premeditatedly, deliberately, on purpose, and of his malice aforethought did make an assault, and with a dangerous and deadly weapon, to wit, a revolving pistol loaded then and there with gunpowder and leaden balls, which he, the said Frederick Seymour Barrington, in his hands then and there had and held, at and against him the said James P. McCann, then and there feloniously, deliberately, willfully, premeditately, on purpose, and of his malice aforethought did shoot off and discharge and with the revolving pistol aforesaid and the leaden balls aforesaid then and there feloniously, willfully, premeditatedly, deliberately, on purpose, and of his malice aforethought did shoot, strike, and penetrate and wound him, the said James P. McCann, in and about a vital part of the body of him, the said James P. McCann, giving to him, the said James P. McCann, at the county of St. Louis aforesaid and State of Missouri, on the said 18th day of June, A. D. 1903, with a dangerous and deadly weapon, to wit, the revolving pistol aforesaid and the gunpowder and leaden balls aforesaid, in and upon the head and body of him, the said James P. McCann, divers and sundry mortal wounds, and the said James P. McCann, by reason of said mortal wounds so inflicted as aforesaid, then and there became and was unconscious and insensible and in a stupor of body and mind and was then and there helpless and wholly in the power and control of the said Frederick Seymour Barrington, and that the said Frederick Seymour Barrington then and there, well knowing the helpless, unconscious, and insensible condition of the said James P. McCann and wickedly contriving and intending then and there the said James P. McCann to kill and murder, he, the said Frederick Seymour Barrington, on the said 18th day of June, 1903, at the county of St. Louis and State of Missouri aforesaid, did then and there, immediately after the giving and inflicting of the said gunshot wounds in the manner and form aforesaid and at the time and place aforesaid in and upon the body of the said James P. McCann, did then and there with force and arms and with great violence in and upon him, the said James P. McCann, then and there being feloniously, willfully, premeditatedly, deliberately, and of his malice aforethought did make an assault, and that him, the said Frederick Seymour Barrington, then and there feloniously, premeditately, deliberately, willfully, and of his malice aforethought did take the said James P. McCann around the neck and body of him, the said James P. McCann, into both the hands and arms of him, the said Frederick Seymour Barrington, and did then

and there feloniously, premeditatedly, deliberately, willfully, and of his malice aforethought cast, throw, and push the said James P. McCann into a certain pond there situate, wherein said pond
6 there was a great quantity of water, by means of which said casting, throwing, and pushing of the said James P. McCann into the pond aforesaid by the said Frederick Seymour Barrington in the manner and form as aforesaid, he, the said James P. McCann, in the pond aforesaid, with the water aforesaid, was then and there choked, strangled, and suffocated, and by reason of the said choking, strangling, and suffocating with the water aforesaid, in the manner and form aforesaid, as well as of the mortal wounds inflicted upon him, the said James P. McCann, by the said Frederick Seymour Barrington, in the manner and form as aforesaid, he, the said James P. McCann, at the county of St. Louis and State of Missouri aforesaid, on the said 18th day of June, 1903, then and there of the mortal wounds aforesaid and the choking, strangling, and suffocating aforesaid then and there instantly died. And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Frederick Seymour Barrington, him, the said James P. McCann, in the manner and by the means aforesaid, feloniously, willfully, deliberately, premeditatedly, and of his malice aforethought did kill and murder, against the peace and dignity of the State.

And the grand jurors aforesaid, on their oath aforesaid, do further present and charge that the said Frederick Seymour Barrington on the 18th day of June, A. D. 1903, at the county of St. Louis and State of Missouri aforesaid, in and upon the said James P. McCann feloniously, willfully, deliberately, premeditatedly, and of his malice aforethought, did make an assault, and the said James P. McCann in some way and manner and by some means, instruments, and weapons to these jurors unknown did then and there feloniously, willfully, deliberately, premeditatedly, and of his malice aforethought, deprive of life, so that the said James P. McCann then and there instantly died. And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Frederick Seymour Barrington, him, the said James P. McCann, in the manner and by the means aforesaid
7 feloniously, willfully, deliberately, premeditatedly, and of his malice aforethought did kill and murder, against the peace and dignity of the State.

And the grand jurors aforesaid, on their oath aforesaid, do further present and charge that the said Frederick Seymour Barrington on the 18th day of June, A. D. 1903, at the County of St. Louis, in the State of Missouri aforesaid, in the perpetration of a robbery from the person of one James P. McCann with force and arms did unlawfully, willfully, feloniously, and of his malice aforethought, make an assault in and upon the said James P. McCann, and that the said Frederick Seymour Barrington in some way and manner and by some means, devices, instruments, and weapons to these grand jurors unknown did then and there unlawfully, feloniously, willfully, and of his malice aforethought, deprive the said James P. McCann of life, so that the said James P. McCann did then and there instantly

die. And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Frederick Seymour Barrington, him, the said James P. McCann, in the manner and by the means aforesaid, in the perpetration of the robbery aforesaid, unlawfully, feloniously, willfully, and of his malice aforethought, did kill and murder, against the peace and dignity of the State.

ROWLAND L. JOHNSTON,
Prosecuting Attorney for said
County of St. Louis, Mo.

And said indictment is endorsed on the back thereof as follows, to wit:

(Endorsements:)

No. 9215.

Circuit Court of St. Louis County.

THE STATE OF MISSOURI,
vs.
FREDERICK SEYMOUR BARRINGTON.

Charge: Murder, 1st degree.

8

List of witnesses.

1. Otto W. Koch,
2. Louis Tucker,
3. F. D. Monahan,
4. John Ollien,
5. Thomas Leonard,
6. Christ Goerke,
7. Alex. Potitch,
8. Annie Lang,
9. Mrs. Onie Morrison,
10. Chas. Morrison,
11. Charles Sacks,
12. William Mott,
13. Isaac Bennett,
14. Martha Lang,
15. Creecy Lewright,
16. Sylvia Lewright,
17. Wm. P. Johnson,
18. John Morris,
19. Oliver Goodman,
20. Edward Powers,
21. William Spink,
22. Ferdinand Biel,
23. L. W. Brown,
24. J. D. Salkeld,
25. John Cordell,
26. John Schmidt,
27. George Greely,
28. John Finan,
29. Jos. James,
30. Capt. G. T. McNamee,
31. Roscoe T. Shaw,
32. Pat. Kirk,
33. Gratiot Cabanne,
34. Robt. L. Ball,
35. Mrs. Jessie McCann,
36. Louis Hisserich,
37. R. L. Moseley,
38. J. F. O'Keef,
39. Thomas Coleman,
40. Julius Krueger,
41. Emil Krueger,
42. J. W. Church,
43. B. T. Hume,
44. Dr. H. T. Randall.

A true bill.

HENRY P. WOLFF, *Foreman.*

Filed Oct. 2, 1903. F. J. Hollocher, clerk circuit court.

Upon the returning and filing of the indictment aforesaid, and pursuant to the statutes in such cases made and provided, a certified copy thereof was duly made out by the clerk of said court, who caused the same to be delivered, by the sheriff of said county, to said defendant on the 3rd day of October, 1903.

And afterwards, again at the September term, 1903, of said court, the following further proceedings were had in said
9 cause, to wit:

TUESDAY, *October 6th, 1903.*

STATE OF MISSOURI,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Comes now at this day the prosecuting attorney for and on behalf of the State, and said defendant, being in custody, is brought into court and appears in his own proper person, as well as by his counsel, Beno Altheimer and Shelly Grover, esqs.; and said defendant being now formally arraigned upon the indictment herein against him, a certified copy of said indictment having been delivered to said defendant at least forty-eight hours before this his arraignment thereon, he, the said defendant, without pleading to the charge therein contained, doth now file his motion to quash said indictment and also his affidavit in support of said motion. Whereupon said defendant is remanded to the custody of the county jailor to await the further action of the court.

And again at said term of said court the following further proceedings were had herein, to wit:

SATURDAY, *October 17th, 1903.*

STATE OF MISSOURI,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Comes now on this day R. L. Johnston, esq., prosecuting attorney, for and on behalf of the State, and said defendant being in custody, is brought into court and appears in his own proper person, as well as by his counsel. And thereupon the motion of the defendant to quash the indictment herein is argued and submitted to the court, and the court not being fully advised what decision to render in the premises, doth take time to consider thereof.

And again at said term of said court the following further proceedings were had herein, to wit:

MONDAY, *November 2nd, 1903.*

10

STATE OF MISSOURI,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Comes now at this day the State's attorney for the State, and said defendant being in custody, is brought into court and appears in his own proper person; and the motion of said defendant to quash the indictment herein against him, and all and each of the counts thereof, having been duly and fully considered, it is ordered and adjudged by the court, that said motion to quash the indictment as well as to quash each count thereof, be, and the same is hereby, overruled.

And again at said term of court, the following further proceedings were had in said cause, to wit:

SATURDAY, *November 7th, 1903.*

STATE OF MISSOURI,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Comes now at this day the prosecuting attorney for and on behalf of the State, and said defendant, being in custody, is brought into court and appears in his own proper person, as well as by his counsel and files and submits to the court his demurrer to the indictment in this cause, and to each and all of the counts thereof; and the court having duly and fully considered said demurrer, doth now hereby overrule the same. Plea in abatement filed by defendant; reply thereto filed. And the issue raised in said plea in abatement and the reply thereto being now submitted to the court upon all the evidence adduced, the court doth find, that the defendant is a citizen of Great Britain and subject to the King of Great Britain and Emperor of India, and as to all other matters contained in said plea in abatement, the court finds for the State and against the defendant, and doth accordingly order and adjudge that the

11 defendant take nothing by this his plea in abatement. (And said defendant being now formally arraigned upon the indictment against him pleads "not guilty," to each and every count therein contained and to the whole of said indictment, and for trial puts himself upon the country, and the State's attorney doth the like.) Whereupon said defendant is remanded to the custody of the county jailer.

Ordered by the court, the necessity appearing therefor, that the official stenographer of this court do, and he is hereby ordered and directed to furnish a complete transcript of his notes taken in this cause to the present day, for the use of the court.

12 And again at the said term of said court the following further proceedings were had in said cause, to wit:

WEDNESDAY, *November 18th, 1903.*

STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Ordered by the court, of the court's own motion, that this cause be and the same is hereby set down for trial for Monday, December 14th, 1903.

And again at said term of said court the following further proceedings were had in said cause, to wit:

FRIDAY, *December 4th, 1903.*

STATE OF MISSOURI
vs.
F. SEYMOUR BARRINGTON, DEFT.

Application of the defendant for continuance filed.

And again at said term of said court the following further proceedings were had in said cause, to wit:

MONDAY, *December 7th, 1903.*

THE STATE OF MISSOURI
vs.
F. SEYMOUR BARRINGTON, DEFT.

Comes now at this day the prosecuting attorney for the State, and comes also said defendant by his counsel; and the application of said defendant for a continuance heretofore filed herein, having been duly and fully considered, is now by the court hereby sustained; and it is accordingly ordered by the court that this cause be and the
13 same is hereby continued to the next term of this court, and that the same be docketed for trial for Monday, January 25th, 1904.

And again at said term of said court the following further proceedings were had in said cause, to-wit:

THURSDAY, *December 24th, 1903.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Application of defendant for citation against William Garen, Oscar Messing, alias, Oscar Dane, The St. Louis Theatre Company, a corporation, and Victor Bateman, for contempt filed.

And again at said term of said court the following further proceedings were had in said cause, to-wit:

SATURDAY, *December 26th, 1903.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

The application of the defendant for citation against certain parties for contempt, heretofore filed herein, having been duly and fully considered, the prayer thereof is now by the court hereby denied.

And again at said term of said court the following further proceedings were had in said cause, to-wit:

MONDAY, *December 28th, 1903.*

THE STATE OF MISSOURI
vs.
14 FREDERICK SEYMOUR BARRINGTON, DEFT.

Comes now again at this day the prosecuting attorney for and on behalf of the State, and comes also said defendant by his counsel and files and submits to the court his application for a citation for contempt against William Garen, Oscar Messing, alias Oscar Dane, The St. Louis Theatre Company, a corporation, and Victory Bateman. And the court, having duly and fully considered said application and being fully advised in the premises, doth now hereby deny the prayer thereof.

And again at said term of said court the following further proceedings were had in said cause, to wit:

THURSDAY, *January 7th, 1904.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Notice of application for change of venue filed.

Comes now the prosecuting attorney for and on behalf of the State, and said defendant is brought into court and appears in his own proper person, as well as by his counsel; whereupon said defendant by his counsel files his application for change of venue herein, and the court doth order the same set down for hearing for Saturday, January 6th, 1904.

And again at said term of said court the following further proceedings were had in said cause, to wit:

SATURDAY, *January 9th, 1904.*

15 THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Ordered by the court, on motion, that the defendant be and hereby is given until February 20th, 1904, to file his term bill of exceptions herein.

And now at this day comes Beno Altheimer, esq., and withdraws as counsel for said defendant, and thereupon comes Wilfred Jones, esq., and enters his appearance as associate counsel for said defendant.

And afterwards, at the January term, 1904, of said court, the following further proceedings were had in said cause, to wit:

SATURDAY, *January 16th, 1904.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Comes now at this day the prosecuting attorney for and on behalf of the State of Missouri, and said defendant is brought into court and appears in his own proper person as well as by his counsel; and thereupon the taking of testimony on the application for change of venue is begun and progresses, and for want of time to conclude the same before the hour of adjournment, it is ordered by the court that the further hearing thereof be deferred until next Monday morning at 9.30 o'clock, and said defendant is remanded to the custody of the county jailor.

And again at said term of said court the following further proceedings were had in said cause, to wit:

16 MONDAY, *January 18th, 1904.*

THE STATE OF MISSOURI,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Comes now again at this day the prosecuting attorney for and on behalf of the State, and said defendant is brought into court and appears in his own proper person, as well as by his counsel; and thereupon the taking of testimony on the application for change of venue is resumed and concluded; and the court, not being fully advised what decision to render in the premises, doth take time to consider thereof.

And again at said term of said court, the following further proceedings were had in said cause, to wit:

MONDAY, *January 25th, 1904.*

THE STATE OF MISSOURI,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT,

Comes now at this day the prosecuting attorney for and on behalf of the State, and said defendant is brought into court and appears in his own proper person, as well as by his counsel, and the application of said defendant for change of venue having been heretofore submitted to the court upon all the evidence and proofs adduced on behalf of the State and defendant; and the court having seen and heard the same, and being now fully advised in the premises, doth find the issue herein joined on said application for change of venue in favor of the State of Missouri and against said defendant, and doth accordingly deny the said application. Ordered by the court, of its own motion, that this cause be and hereby is reset for
17 trial for Tuesday, February 3d, 1904.

And again at said term of said court, the following further proceedings were had in said cause, to wit:

MONDAY, *February 8th, 1904.*

STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Ordered by the court, of its own motion, that a venire for a special jury of seventy-six (76) men issue herein, to be directed to the sheriff of the county of St. Louis, and made returnable to Tuesday, February 23, 1904, at 9.30 o'clock a. m., the date of trial.

And again at said term of said court, the following further proceedings were had in said cause, to wit:

SATURDAY, *February 20th, 1904.*

STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Comes now at this day the prosecuting attorney for the State and comes also said defendant by his counsel; and the application of said defendant for an order of court to allow said defendant to inspect property in the possession of the prosecuting attorney and of the sheriff of St. Louis County, being now submitted to the court, and the court having duly and fully considered the same, and

being fully advised in the premises, doth now hereby sustain said application, and it is accordingly ordered by the court that said defendant and his counsel be permitted to inspect the articles
18 named in said application in the presence of the prosecuting attorney or his assistant and of the sheriff or his deputy, respectively, but that said articles are not to be removed from the possession of the present custodians thereof.

And thereupon comes said defendant by his counsel and tenders and files his term bill of exceptions to the judgment and rulings of the court herein, which term bill of exceptions is this day signed, sealed, and allowed by the court, and ordered made a part of the record in this cause.

And again at said term of said court, the following further proceedings were had in said cause, to wit:

TUESDAY, *February 23d, 1904.*

STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Comes now at this day the prosecuting attorney for and on behalf of the State, and said defendant being in custody, is brought into court and appears in his own proper person, as well as by his counsel, Shelly Grover and Wilfred Jones, esqs.; and thereupon said defendant files and submits to the court his motion to quash the panel of special jurors summoned herein. And the court having duly and fully considered said motion, and being fully advised in the premises, doth now hereby overrule the same. Thereupon said defendant also files and submits to the court his challenge to the array of special jurors summoned in this cause; and the court having duly and fully considered the same, and being fully advised in the premises, doth now hereby overrule the same. And this cause being now called for trial, and said defendant having been heretofore formally arrainged upon the indictment herein against him, and having entered a
19 plea of "not guilty" to the charge therein contained, and both sides having announced themselves as being now ready for trial; thereupon the sheriff of this county returns into court the names of one hundred jurors duly summoned by him from the body of said county, and counsel on both sides proceed to an examination of said jurors on their "voir dire" until the hour of six (6) o'clock p. m., at which hour forty competent and qualified jurors are found on the panel to sit as such in this cause, and a list of the same is thereupon delivered to each, the State and the defendant herein. And said defendant, by his counsel, thereupon avails himself of his statutory right to a list of said qualified jurors at least twenty-four hours before proceeding to trial; whereupon said jurors are discharged by the court, with proper instructions, until Thursday morning, February

25th, 1904, at 9.30 o'clock, to which day and hour this cause is continued; and said defendant is remanded to the custody of the county jailor.

And again at said term of said court the following further proceedings were had in said cause, to wit:

THURSDAY, *February 25th, 1904.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDENT.

Comes now again at this day the prosecuting attorney for and on behalf of the State of Missouri, and said defendant is brought into court and appears in his own proper person, as well as by his counsel, Shelly Grover and Wilfred Jones, esqs. Whereupon the prosecuting attorney voluntarily enters a nolle prosequi to the fifth (5th) count of the indictment herein; and it is accordingly considered and adjudged by the court that the State of Missouri, take nothing by its fifth count contained in the indictment herein against said defendant. And thereupon at the hour of 10 o'clock a. m. counsel proceed to exercise their respective challenges of the jurors who were found to be competent and qualified on Tuesday, February 23d, 1904, to sit as such in this cause, which having been duly made, there are found to remain unchallenged on the list the following jurors, to wit, J. H. Nickel, August Arft, Austin Devaney, G. W. Sallee, George Lehmann, Joseph Lindemann, James Sutton, Henry Schollmeyer, John L. Stanage, Charles Barbee, Emil Poertner, and Henry P. Aff, twelve good and lawful men of the county of St. Louis, who were duly selected, tried, sworn, and charged the issue herein well and truly to try and render a true verdict according to the law and the evidence. Whereupon the oath required by section 2629 of the Revised Statutes of Missouri of 1899 is administered to Deputy Sheriffs Harry W. Schnecko, John W. Bellairs, and John P. Ossenfort, in open court by the clerk of this court, before taking charge of the jury throughout the trial of this cause. And thereupon the trial of this cause is begun and the taking of testimony progresses; and for want of time to conclude the same before the hour of adjournment it is ordered by the court that the further hearing thereof be deferred until tomorrow morning at 9 o'clock; and said jurors are given in charge of the sheriff for the night, and said defendant is remanded to the custody of the county jailor.

And again at said term of said court, the following further proceedings were had in said cause, to wit:

FRIDAY, *February 26th, 1904.*

STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

21 Comes now again at this day the prosecuting attorney for and on behalf of the State, and said defendant is brought into court and appears in his own proper person, as well as by his counsel, and come also the jurors in this behalf empanelled and sworn, and thereupon the trial of this cause is resumed and the taking of testimony progresses, and for want of time to conclude the same before the hour of adjournment, it is ordered by the court that the same stand adjourned until to-morrow morning at 9.30 o'clock; and said jurors are thereupon given in charge of the sheriff for the night, and said defendant is remanded to the custody of the county jailor.

And again at said term of said court the following further proceedings were had in said cause, to wit:

SATURDAY, *February 27th, 1904.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Comes now again at this day the prosecuting attorney for and on behalf of the State, and said defendant is brought into court and appears in his own proper person, as well as by his counsel, and come also the jurors in his behalf empanelled and sworn, and thereupon the trial of this cause is resumed and the taking of testimony progresses, and for want of time to conclude the same before the hour of adjournment, it is ordered by the court that the same stand adjourned until next Monday morning at 9.30 o'clock; and said jurors are thereupon given in charge of the sheriff, and said defendant is remanded to the custody of the county jailor.

And again at said term of said court the following further proceedings were had in said cause, to wit:

22 MONDAY, *February 29th, 1904.*

STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Comes now again at this day the prosecuting attorney for and on behalf of the State, and said defendant is brought into court and

appears in his own proper person, as well as by his counsel, and come also the jurors in this behalf empannelled and sworn, and thereupon the trial of this cause is resumed and the taking of testimony progresses, and for want of time to conclude the same before the hour of adjournment, it is ordered by the court that the same stand adjourned until to-morrow morning at 9.30 o'clock; and said jurors are thereupon given in charge of the sheriff for the night, and said defendant is remanded to the custody of the county jailor.

And again at said term of said court the following further proceedings were had in said cause, to wit:

TUESDAY, *March 1st, 1904.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Comes now again at this day the prosecuting attorney for and on behalf of the State, and said defendant is brought into court and appears in his own proper person, as well as by his counsel, and come also the jurors in this behalf empanelled and sworn, and thereupon the trial of this cause is resumed and the taking of testimony progresses, and for want of time to conclude the same before the hour of adjournment, it is ordered by the court that the same stand
23 adjourned until to-morrow morning at 9.30 o'clock; and said jurors are thereupon given in charge of the sheriff for the night, and said defendant is remanded to the custody of the county jailor.

And again at said term of said court the following further proceedings were had in said cause, to wit:

WEDNESDAY, *March 2d, 1904.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARKINGTON, DEFENDANT.

Comes now again at this day the prosecuting attorney for and on behalf of the State, and said defendant is brought into court and appears in his own proper person, as well as by his counsel, and come also the jurors in this behalf empanneled and sworn, and thereupon the trial of this cause is resumed and the taking of testimony progresses, and for want of time to conclude the same before the hour of adjournment, it is ordered by the court that the same stand adjourned until to-morrow morning at 9.30 o'clock; and said jurors are thereupon given in charge of the sheriff for the night, and said defendant is remanded to the custody of the county jailor.

And again at said term of said court the following further proceedings were had in said cause, to wit:

THURSDAY, *March 3d, 1904.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Comes now again at this day the prosecuting attorney for and on behalf of the State, and said defendant is brought into court and appears in his own proper person, as well as by his counsel,
24 and come also the jurors in this behalf empanelled and sworn and thereupon the trial of this cause is resumed and the taking of testimony progresses, and for want of time to conclude the same before the hour of adjournment, it is ordered by the court that the same stand adjourned until to-morrow morning at 9.30 o'clock; and said jurors are thereupon given in charge of the sheriff for the night, and said defendant is remanded to the custody of the county jailor.

And again at said term of said court the following further proceedings were had in said cause, to wit:

FRIDAY, *March 4th, 1904.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Comes now again at this day the prosecuting attorney for and on behalf of the State, and said defendant is brought into court and appears in his own proper person, as well as by his counsel, and come also the jurors in this behalf empanelled and sworn, and thereupon the trial of this cause is resumed and the taking of testimony progresses, and for want of time to conclude the same before the hour of adjournment, it is ordered by the court that the same stand adjourned until to-morrow morning at 9.30 o'clock, and said jurors are thereupon given in charge of the sheriff for the night, and said defendant is remanded to the custody of the county jailor.

And again at said term of said court the following further proceedings were had in said cause, to wit:

SATURDAY, *March 5th, 1904.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

25 Comes now again at this day the prosecuting attorney for and on behalf of the State, and said defendant is brought into court and appears in his own proper person, as well as by his counsel, Shelley Grover and Wilfred Jones, esqs., and come also the

rors in this behalf empanelled and sworn, and thereupon the trial this cause is resumed and the taking of testimony and the arguents being concluded, the jurors aforesaid retire for deliberation charge of Deputy Sheriffs Harry W. Schnecko and John P. Osnfort, the oath required by section 2629 of the Revised Statutes of issouri for 1899 being first administered to said deputy sheriffs by e clerk in open court. And said jurors, having concluded their eliberations, return again into court and upon their oath aforesaid resent the following verdict, to wit:

We, the jury, find the defendant, Frederick Seymour Barrington, uilty of murder in the first degree, as charged in the indictment. no. L. Stanage, foreman.

And upon request of said defendant, by his counsel, said jurors are olled by the court, and each responding to his name when called eclares the above and foregoing to be his individual verdict. And aid jurors are thereupon discharged, and said defendant is remanded o the custody of the county jailor to await the judgment and senence of this court. Verdict and instructions filed.

And again at said term of said court the following further proceedings were had in said cause, to wit:

TUESDAY, *March 10th, 1904.*

STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT. } Motion of defendant for new trial filed.

26 And again at said term of said court, the following further proceedings were had in said cause, to-wit:

SATURDAY, *April 2d, 1904.*

STATE OF MISSOURI,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Affidavit of John R. Bennett in support of motion for new trial filed.

And again at said term of said court the following further proceedings were had in said cause, to-wit:

WEDNESDAY, *April 6th, 1904.*

STATE OF MISSOURI,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Comes now at this day the prosecuting attorney for and on behalf of the State, and said defendant is brought into court and appears in his own proper person, as well as by his counsel, and thereupon the

motion of said defendant for a new trial, heretofore filed herein, is argued by both sides and submitted to the court, and the court not being fully advised what decision to render in the premises, doth take time to consider thereof.

And again at said term of said court the following further proceedings were had in said cause, to-wit:

MONDAY, *April 18th, 1904.*

STATE OF MISSOURI,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

27 Comes now at this day the State's attorney for the State, and said defendant is brought into court and appears in his own proper person, and thereupon the motion of said defendant for a new trial, having been duly and fully considered, it is now ordered and adjudged by the court that said motion be and the same hereby is overruled.

And again at said term of court, the following further proceedings were had in said cause, to wit:

WEDNESDAY, *April 20th, 1904.*

STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT. — Motion of defendant in arrest of judgment filed.

And again at said term of said court, the following further proceedings were had in said cause, to wit:

SATURDAY, *April 23rd, 1904.*

THE STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT. — Murder, first degree.

Come now at this day the prosecuting attorney for the State, and said defendant, being in custody, is brought into court and appears in his own proper person, as well as by his counsel, Shelley Grover and Wilford Jones, esqs., and thereupon said defendant's motion in arrest of judgment, heretofore filed herein, having been duly and fully considered, is by the court hereby overruled. Whereupon the court proceeds to pronounce judgment and sentence upon said defendant in accordance with the verdict of the jury heretofore rendered against him at the trial of this cause. And said defendant is asked by the court, if he has anything to say, why sentence of
28 death should not now be pronounced upon him, in accordance with the verdict of the jury heretofore rendered herein, and he having nothing to say, it is therefore considered and adjudged by the court, that he, the said defendant, Frederick Seymour Barring-

on, for his offence of murder in the first degree, and in pursuance of the verdict of the jury aforesaid, be taken from this court to the place whence he came, there to remain in the custody of the sheriff of St. Louis County, until Tuesday, the 14th day of June, A. D. 1904, and that on said 14th day of June, 1904, he be taken by the said sheriff to a convenient place of execution, within the walls of the county jail of said county of St. Louis, at Clayton, the county seat of this, the said county of St. Louis, if said execution can conveniently take place therein, but if said jail is not so constructed that the said execution can conveniently take place therein, then within an enclosure adjoining said jail, or as near thereto as possible, surrounded by a wall, palisade, or fence higher than the gallows, and sufficiently close to exclude the view of persons on the outside; and that then and there on said 14th day of June, 1904, between the hours of six o'clock in the forenoon and five o'clock in the afternoon of said day, he, the said Frederick Seymour Barrington, be hanged by the neck until he be dead.

And the court doth further order that the clerk of this court issue a warrant directed to the said sheriff, commanding him to do execution of and carry into effect the judgment and sentence rendered as aforesaid.

And it is further ordered by the court, on motion, that said defendant be, and he is hereby, given until 23d, 1904, to file his bill of exception in this cause.

And again at said term of said court, the following further proceedings were had in said casue, to wit:

29 SATURDAY, *April 23rd, 1904.*

THE STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Comes now at this day the prosecuting attorney for the State, and said defendant is brought into court and appears in his own proper person, as well as by his counsel, and thereupon said defendant by his counsel tenders and files his affidavit for appeal and prays an appeal from the judgment of the court herein to the Supreme Court of the State of Missouri. which appeal the court doth grant. And thereupon it is ordered by the court, of its own motion, that the judgment and sentence rendered herein, and the execution thereon, be stayed pending said appeal.

And it is further ordered by the court, the necessity appearing therefor, that the official stenographer of this court do, and he is hereby ordered and directed to, furnish a complete transcript of his notes taken at the trial of this cause for the information and use of the court.

And afterwards at the May term, 1904, of said court, the following further proceedings were had in said cause, to wit:

MONDAY, *July 18th, 1904.*

THE STATE OF MISSOURI,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Comes now said defendant by his counsel, upon whose application, and for good cause shown, it is ordered by the court that the
30 time heretofore allowed the defendant for filing his bill of exceptions herein be, and hereby is, extended until and including the 17th day of August, 1904. Memorandum of judge filed.

And again at said May term, 1904, of said court, the following further proceedings were had in said cause, to wit:

TUESDAY, *August 16th, 1904.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Comes now said defendant by his counsel, upon whose application, and for good cause shown, it is ordered by the court that the time heretofore allowed the defendant for filing his bill of exceptions herein be, and hereby is, extended until and including September 10th, 1904. Memorandum of judge filed.

And again at said term of said court, the following further proceedings were had in said cause, to wit:

FRIDAY, *September 9th, 1904.*

THE STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Comes now at this day said defendant by his counsel and tenders and files his bill of exceptions to the judgment and rulings of the court herein, which bill of exceptions is this day signed, sealed, and allowed by the court and ordered made a part of the record in this cause.

And said bill of exceptions is in words and figures as follows, to wit:

* * * * * * *

35 Accompanying said application for change of venue, and filed therewith, was the following notice and return thereon, to wit:

36 In the Circuit Court of St. Louis County, in the State of Missouri.

STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

To R. L. Johnston, prosecuting attorney of St. Louis County, and A. E. L. Gardner, his assistant.

You are hereby notified that on Thursday, Jan. 7th, 1904, the defendant in the above-entitled cause will file in open court at 9.30 a. m., or as soon thereafter as counsel can be heard, an application for change of venue to some other county on account of defendant's being unable to get a fair and impartial trial of said cause in St. Louis County and the 13th judicial circuit, because the minds of the inhabitants of said circuit are prejudiced against him. Defendant will ask that the court set a time for the hearing of said application.

FREDERICK SEYMOUR BARRINGTON,
Defendant.
By SHELLEY GROVER & BENO ALTHEIMER,
his Attys.

Service of above notice acknowledged this 6th day of January, 1904.

A. E. L. GARDNER,
Asst. Pros. Atty.

On January 16th, 1904, and at the hearing and trial of said change of venue in said court and before said judge, defendant offered evidence and witnesses who testified as follows, to wit:

Mr. E. L. CARTER, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.
A. E. L. Carter.
Q. Where do you live?
A. Kirkwood.
Q. How long have you lived there?

A. About thirteen years.

Q. What is your business?

37 A. At the present time I am in the insurance business.

Q. Are you well acquainted with the neighborhood down there where you live?

A. I know a good many people.

Q. Have you heard any expressions since the 28th day of June, 1903, up to the present time concerning the case of the State of Missouri against Frederick Seymour Barrington, charged with the killing of James P. McCann?

A. I have heard it discussed frequently.

Q. What seems to be the prevalent opinion of people concerning the defendant from that discussion?

A. It is that he ought to be hung.

Q. Have you ever heard an expression in his favor by anybody outside of his counsel?

A. I don't think I ever have.

Q. And you have heard it discussed a great deal, have you not?

A. Frequently.

Q. Up to the present time?

A. Frequently.

Q. Do you remember any particular expressions you heard said concerning him down there?

A. I only recollect one that I can repeat.

Q. What was that?

A. That was from the marshal of the town. In speaking to him after the arrest he spoke of it. In speaking of detective work in that case he said "he left leaving tracks." I remember it because of the expression.

Q. The defendant left leaving tracks?

A. Yes, sir.

Q. You think there is a great prejudice existing against him?

A. Yes, sir.

Q. Do you think he would get a fair trial in this county?

A. That would depend on the jury. If I tried him, I would be governed by the law and the evidence.

Q. Do you think he could get a fair and impartial trial in the county, everything taken into consideration?

A. With the average jury, I say no.

Cross-examination by Mr. JOHNSTON:

38 Q. With whom have you talked in your locality besides the marshal?

A. With the boys on the train. Perhaps with you, or the boys in the presence of you. I have discussed it with Max Good, and Fritz White, a lawyer.

Q. Do you remember any expressions either of those gentlemen made regarding the case?

A. The expression that I recollect—I think it would be difficult—in talking with friends every day—for them to prove absolutely that he murdered the man without an eyewitness, or something to that effect.

Q. Who said that?

A. I think it was in a discussion we had about it.

Q. In your opinion did a statement of that kind lead you to believe that there was a prejudice against him with either of those gentlemen?

A. He was discussing it from a legal standpoint.

Q. When he said that he thought it would be difficult to find him guilty without eyewitnesses, that was based on the law?

A. Based upon the criminal law.

Q. These gentlemen, Mr. White and Mr. Good, whom you have mentioned, they are some you talked to down in Kirkwood?

A. Yes, sir; we ride together frequently.

Q. Do you remember expressions of anyone else?

A. I can't recollect the language. Those things pass out of my mind. It got so it ceased to be discussed.

Q. Isn't it the general opinion in your locality that it would be very difficult for the State to prove a case which would bring about a conviction?

A. I don't think I ever heard it only from discussing it with a lawyer.

Q. You think that is the only place you heard it?

A. Yes, sir.

Q. Mr. Good isn't a lawyer, is he?

A. No, sir. It was Mr. White, and Mr. White is a lawyer.

Q. You say you feel you could give the defendant a fair and impartial trial?

Mr. GROVER. We object. It does not make any difference whether he would or not.

39 COURT. Objection sustained. That is a question for the court to determine.

Q. How recently, Mr. Carter, have you had any conversations regarding this case?

A. I don't think for some months past.

Q. How many months?

A. I would not like to make a statement.

Q. (COURT.) Your best recollection?

A. The thing has been hanging so long and the newspapers have written up so much about it that it ceased to be a matter of interest in our discussions. We have not discussed it for several months that I know of.

Q. Then, Mr. Carter, as a matter of fact, it has ceased to interest the people in your community and there has been no discussion about it for several months?

A. It ceased to interest me.

Redirect examination by Mr. GROVER:

Q. I will ask you, Mr. Carter, if you have not heard it discussed among people in your neighborhood since the play "The Desperate Lord Barrington" was put upon the boards?

A. I heard something about the play, but I don't know to-day anything about the play—the character of the play. I was away for a few weeks.

Q. I asked you if you heard the matter discussed in that connection?

A. Well, I haven't heard anything about—what I saw in reference to that was newspaper articles in reference to the court proceedings in regard to that play. That is about all I know about it.

Q. (COURT.) How large a neighborhood are you familiar with in which that expression of sentiment prevails?

A. I live in the city of Kirkwood, and I do not know the population exactly of the town, but we ride in and out together every day, you know. We have our own circle of friends.

Q. (COURT.) Are they mostly Kirkwood people or some people along the railroad at other places?

40 A. We have the Webster people oftentimes, and I have heard the matter discussed both by Kirkwood and Webster people.

Q. (COURT.) Your knowledge is pretty much limited to those two towns?

A. Outside of the county—I go very frequently out through the county, but I don't go out for the purpose of discussing matters of that sort.

Q. (That is all.)

Mr. C. L. SHOTWELL, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. C. L. Shotwell.

Q. Where do you live?

A. In the vicinity of Ballwin.

Q. How long have you lived there?

A. Ever since I was born.

Q. Since the 28th of June up to the present time I will ask if you have heard any expressions of opinion among the people, or any conversation or comment, on this case of the State of Missouri against Frederick Seymour Barrington, wherein he was charged with murder?

A. Shortly after the occurrence near Bonfils almost everybody spoke of this case.

Q. What was the general sentiment in speaking of it?

A. I presume the majority of the people thought the defendant was guilty and should be hung. Some few thought Mr. McCann was still alive.

Q. (COURT.) State what they said.

A. That is what they said.

Q. Now, have you ever heard anything said in his favor by anybody—the defendant—except by his attorneys?

A. Not ferquently, except merely it was remarked that they thought perhaps Mr. McCann was still alive.

Q. You have heard the case discussed up to the present time?

A. Yes, sir.

Q. Have you heard any discussion since the play "The Desperate Lord Barrington" was put on at Havlin's theatre?

A. I heard some speak of the play as a good play.

41 Cross-examination by Mr. JOHNSTON:

Q. You are prosecuting attorney, I believe, Mr. Shotwell?

A. Yes, sir.

Q. Whom have you heard making an expression that would lead you to believe that there was a prejudice against the defendant?

A. I have talked the matter over with a considerable number of people. I talked the matter over one day this present week with Mr. D. C. Taylor, of Manchester.

Q. He is a lawyer?

A. Yes, sir.

Q. Whom is the last one of the citizens or people living there that you have heard expressing themselves in regard to this?

A. E. L. Kern, of Ballwin.

Q. Do you remember what it was he said?

A. He said there was a very fine play in Havlin's theatre.

Q. I am speaking of this case.

A. Mr. Kern asked me what I thought about the case, and if I thought Mr. McCann was really dead, and I told him I didn't know.

Q. That statement on the part of Mr. Kern, did that tend to show any prejudice in his mind against the defendant?

A. That is a matter of opinion.

Q. As a matter of fact, have you of late heard this matter discussed in your neighborhood?

A. Not since several months ago.

Q. You heard some recent discussion about the play?

A. That seems to revive some interest.

Q. But as to the case itself?

A. There is not much to say.

Q. You heard a few expressions?

A. A few expressions.

Redirect examination by Mr. GROVER:

Q. There is not much discussion now for the reason public opinion is well settled on it?

A. Yes, sir; that seemed to be it.

Q. And that is the reason it has ceased to be discussed; it is
42 foregone conclusion?

A. Yes, sir.

Q. (COURT.) Is your acquaintance limited to Ballwin?

A. To Ballwin and Elfisville. Within a radius of five or six miles I know almost everybody.

Mr. STEVE J. HARRIS, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. Steve J. Harris.

Q. Mr. Harris, where do you live?

A. I live in Kirkwood.

Q. How long have you lived there?

A. Nearly two years.

Q. Where did you live before you moved to Kirkwood?

A. I lived in Clayton.

Q. How long have you lived in the county?

A. Since 1896.

Q. What business are you engaged in?

A. I publish the Courier at Kirkwood.

Q. Since June the 28th last up to the present time have you heard this subject of murder charged against Frederick Seymour Barrington in this case discussed among the people of this county?

A. I heard it discussed; yes, sir.

Q. To what extent?

A. Pretty near everybody I came in contact with for a while. I have not heard anything of it recently.

Q. Have you heard anything of it since the play "The Desperate Lord Barrington" was put on the boards?

A. Yes, sir. I did. I heard it a little discused last Sunday, but not in regard to the play.

Q. But you did in reference to the case?

A. Yes, sir.

Q. In these discussions what has been said by the people that discussed it? I do not mean for you to go into detail, I mean generally, what has been said?

A. My opinion is that the man is already convicted—that is my opinion from what I heard.

Q. Is that what they said?

A. I heard perhaps the remark that the man ought to be hung—that he was guilty without a doubt.

43 Q. The remarks you have heard have been similar to that?

A. Yes, sir.

Q. Did you ever hear anything said in the defendant's favor in any of these discussions outside of from his attorneys?

A. I don't think I ever have—not in this case.

Q. So the public opinion seems to be pretty well settled about this matter?

A. It strikes me that way.

Q. That seems to be what, that public opinion?

A. That the defendant is guilty.

Q. Do you think he would get a fair trial in this case, everything considered?

A. I do not.

Cross-examination by Mr. JOHNSTON:

Q. Why, Mr. Harris?

A. Simply on that ground; I believe the public are so prejudiced against him that he couldn't get a fair trial.

Q. You are referring to conversation heard over at Kirkwood?

A. Yes, sir; and other parts of the county I have been in, and by county people I have heard talk in the city.

Q. Who have you talked with in Kirkwood?

A. That would be a hard thing for me to name. I tried to think of those parties and I only could think of one man—Mr. Bohnn, of Carondelet township—I talked with him last Tuesday.

Q. You say you havn't heard this case discussed recently?

A. Except that one exception a few days ago.

Q. With that one expression you have not heard anything said?

A. Not lately.

Q. It was the talk after the alleged crime?

A. Yes, sir.

Redirect examination by GROVER:

Q. The reason it is not discussed at the present time—I will ask you if that is because the public opinion is well settled on that point?

Mr. JOHNSTON. We object to that.

44 COURT. Objection sustained.

Q. Do you know the reason they do not discuss it any more?

A. No, sir; I do not.

Mr. PAUL KURTH, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. Paul Kurth.

Q. Mr. Kurth, where do you reside?
A. I reside at Valley Park, Missouri.
Q. How long have you resided there?
A. All my life, off and on.
Q. That is in this county?
A. Yes, sir.
Q. What business are you engaged in?
A. General merchandise and saloon.
Q. Since the 28th of June last up to the present time have you heard the people of this county discuss and express opinions concerning the defendant, Frederick Seymour Barrington, in this case of the State of Missouri vs. Frederick Seymour Barrington?
A. No, sir; only right after the murder occurred.
Q. What was the general expression at that time? You can state what you heard people say.
A. I have only heard the enormity of the crime discussed.
Q. Did you ever hear people say what ought to be done to the defendant, or anything like that?
A. No, sir; not that I can remember.
Q. It isn't necessary for you to remember the particular persons, if you remember anybody?
A. No, sir. I heard nobody discuss the case further than the enormity of the crime.
Q. Did you ever hear them say anything about the defendant personally?
A. No, sir; not that I can remember.
Q. Then there seemed to be no discussion concerning him on account of this crime or any other acts of his life?
A. No, sir; not that I can remember. The enormity of the
45 crime was such that I believe the general expression is that the man ought to be hung.

Cross-examination by Mr. JOHNSTON:

Q. They were discussing a crime of this kind, the people believing that if a man committed a crime in this county he ought to be hung?
A. Yes, sir.
Q. Valley Park is a large place?
A. Yes, sir.
Q. And since the 28th of June you have heard nobody expressing themselves against the defendant?
A. No, sir.
Q. To your knowledge since the 28th of June?
A. No, sir.

Mr. J. C. A. HILLER, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. Give your initials to the stenographer.
A. J. C. A. Hiller.

Q. Where do you live?
A. I live near Grover, in Meramec township.
Q. In this county?
A. In this county.
Q. How long have you lived there?
A. I have lived there now for between four and five years.
Q. How long have you lived in the county?
A. Well, I lived in the county quite a while until '84, and then I moved away and came back in '98 or '99.
Q. What business are you in?
A. I am a farmer.
Q. Since the 28th of June last up to the present time have you heard any expressions of opinion in your locality concerning the defendant, Barrington, on account of this case of the State of Missouri against Frederick Seymour Barrington?
A. Yes, sir; I have heard people expressing themselves as being of the belief that the defendant in the case, Mr. Barrington, was guilty of the offense charged.
Q. Have you heard anything in his favor said by anyone?
A. Not that I can remember.
Q. How often did you hear it discussed and how much?
A. I can not say that I have heard it discussed often,
46 because I don't take interest in things of this character.
Q. Whenever you have heard it discussed that has been the opinion that was expressed?
A. That to my recollection has been the opinion always; yes, sir.
Q. Under all conditions and circumstances do you think the defendant can get a fair trial in this county?
A. That is a question very hard to answer. It would depend on the kind of a jury. I do not want to be understood as saying that he could not get an impartial jury in the county.

Cross-examination by Mr. JOHNSTON:

Q. Have you discussed it recently with any one?
A. Not that I can remember recently. The fact is, I don't even remember whom I discussed it with. I don't take much interest in things of this character, only that I heard my neighbors talk about it.
Q. You have not talked to any one or heard any one recently discuss it?
A. Not that I can remember recently; no sir. I have a faint recollection of having heard it discussed recently, but I can't tell whom I discussed it with, or whom I heard discuss it.
Q. You say you would not like to testify that you believe that the defendant could not get a fair and impartial trial in St. Louis county?
A. That would depend, in my opinion, as to whether the public mind would be sufficiently prejudiced to give him a fair and impartial trial. That is, when I heard talk about it the public seemed to have an opinion of this matter, and from them, of course, you could not expect a fair trial.

Q. And you do not remember whom you heard discussing this case?
A. No, sir.
Q. Or how many there were?
A. Not so very many, because, as I said, I don't discuss these things so very much.

Mr. J. B. PARKER, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

47 Q. State your name.
A. J. Bartle Parker.
Q. What is your business, Mr. Parker?
A. I am connected with the St. Louis Chronicle.
Q. It is published in the city of St. Louis?
A. Yes, sir.
Q. About ten miles from this court-house?
A. Just about.
Q. From the 28th day of June last up to the present time has your paper circulated in the county of St. Louis?
A. Yes, sir.
Q. Right along?
A. Right along.

Mr. WALTER WEISSENBORN, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.
A. Walter Weissenborn.
Q. You may state your business.
A. I am connected with the St. Louis World, circulation department.
Q. The St. Louis World is published within ten miles of this court-house, is it not?
A. Yes, sir.
Q. Since the 28th day of June, up to the present time, has the St. Louis World circulated in St. Louis County?
A. Yes, sir.
Q. That is all.

Cross-examination by Mr. JOHNSTON:

Q. Where is that paper published?
A. In the city of St. Louis.
Q. Has it a circulation in the county of St. Louis?
A. Yes, sir.
Q. About how much of a circulation?

A. That I could not say. I would have to consult the books for that.
Q. You don't know whether it has one subscriber or a dozen?
A. I know it has over a dozen.
Q. How often is it published?
A. Daily.
Q. Daily and Sunday?
A. Daily and Sunday.

48 Mr. J. B. PARKER, being recalled by Mr. Grover, testified further, as follows:

Q. Your paper has a circulation of several thousand in the county—the St. Louis Chronicle—has it not?
A. I don't know her total on account of people buying at the Union Depot.
Q. It has a circulation of several thousand?
A. Yes, sir.

Mr. A. G. LINCOLN, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. Mr. Lincoln, you state your name, please.
A. A. G. Lincoln.
Q. State your business.
A. I am connected with the circulation department of the Post Dispatch.
Q. The Post Dispatch is published in the city of St. Louis?
A. Yes, sir.
Q. And circulated in this county?
A. Yes, sir.
Q. The regular edition of the Post Dispatch circulates in this county?
A. Yes, sir.
Q. About what is the circulation of the St. Louis Post Dispatch in St. Louis County?
A. I don't think that could be computed. The amount principally circulated in the county would be bought on the street cars and trains. The amount of papers actually delivered by carriers or news boys wouldn't amount to anything.
Q. How does your paper compare with the other newspapers, the regular edition?
A. The dates of the papers that you have asked me to bring are mostly Sunday copies, and we don't file the regular edition. The 5 o'clock editions we file.
Q. The Sunday you file?
A. Yes, sir.

Q. The five o'clock editions contain the same as the regular?
A. Yes, sir.
Q. The five o'clock edition is the same as the regular edition?
A. Yes, sir.
49 Q. This paper, how does it compare with the other papers in St. Louis in the run of circulation, if you know?
A. I couldn't answer that.
Q. Are there several thousand of them that come out here in the county?
Mr. JOHNSTON. We object to that.
COURT. Objection sustained.
Q. Have you any idea of the number of papers that come out here in the county—of the Post Dispatch?
A. No, sir.
Q. None whatever?
A. No, sir.
Q. Is it impossible to compute that?
A. The question is unreasonable. I explained to you that the papers are bought on railroad trains and street cars and we can not put people at these points to ascertain how many people buy the Post-Dispatch. I know how many are delivered out here.
Q. How many do you deliver out here?
A. A thousand or twelve hundred, not to exceed twelve hundred.
Q. And how many of your Sunday edition?
A. About sixteen hundred of the Sunday edition are delivered out here.
Q. The city of St. Louis is the chief market of the people of this county, is it not, for everything?
A. I should assume so.
Q. And the people of this county go forward and back from here to St. Louis in great numbers, do they not?
A. I presume they do.
Q. This county has a population of pretty near fifty thousand, I believe?
A. Yes, sir.
Q. In fact the street car is crowded every day going in and out?
A. I can not answer that question. I never made the trip in my life except once, and that is this morning.
Mr. GROVER. Now, I will have him identify all of these papers
50 in bulk and it will save a good deal of time. I have asked the Post-Dispatch to bring these issues of the paper—June 28th, June 30th, June 29th, July 1st, July 2nd, July 3rd, July 5th, July 12th, December 26th, December 27th, January 10th, and September 6th and September 19th.
Q. Those papers you have produced?
A. I think I brought all but three.
Q. What three were they?
A. You called for the 8 o'clock edition of June 29th, 7 o'clock edition of July 1st, and five o'clock edition of July 1st.

Q. Well, you brought the regular edition?

A. I brought the five o'clock edition of July 1st, omitted the seven o'clock edition of June 30th and eight o'clock edition of June 29th and the seven o'clock edition of July 1st for the reason that we don't preserve them. The five o'clock edition is later than the regular.

Q. These papers that you have produced are circulated in this county?

A. Well, things might be contained in the seven and eight o'clock edition that might not be contained in the regular edition and five o'clock.

Q. And the Sunday editions you said all circulate?

A. Yes, sir.

Q. You brought the five o'clock editions instead of the regular edition?

A. Yes, sir.

Q. Does the five o'clock edition circulate in this county?

A. Well, only to the extent that it might be bought on the trains.

Q. And if any matter of importance appears in the regular edition, it generally appears in the five o'clock also?

A. Yes, sir; and the regular edition precedes the five o'clock edition. The regular edition is the edition we send out here.

51 Q. These papers were circulated throughout the county in the regular course of business, as you usually do?

A. Not in the regular course of business. The regular course would be the number of papers distributed by the regular carriers, and they bring the regular edition.

Q. Now, these papers that you produced here were circulated just like your papers usually are; everyday papers would be circulated daily. They would be circulated these days the same as other days?

A. Yes, sir.

Cross-examination declined.

Mr. JESSE JOPLIN, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. Jesse Joplin.

Q. Mr. Joplin, where do you live?

A. I live out close to Eureka.

Q. In this county?

A. In this county, Meramec township.

Q. How long have you lived there?

A. Nineteen or twenty years.

Q. You have quite a wide acquaintance out in that community?

A. I ride around quite a little bit.

Q. What is your business?

A. Farmer.

Q. Since the 28th day of June up to the present time have you

heard any expressions of opinion or discussions of this defendant in relation to his connection with the alleged murder of James P. McCann?

A. I havn't lately. I did directly after the occurrence. I heard a good deal of talk about it.

Q. What did you hear said?

A. Well, I don't know. The general impression was that he ought to be hung—not wait at all then; but then I haven't heard it discussed since.

52 Q. The people seem to be pretty well settled in their opinion on a thing of that kind?

A. I haven't heard it discussed; not in the last two months.

Q. Do you know why it has not been discussed lately?

A. I think it just naturally died out. The people don't seem to have any more interest in it.

Q. You think the opinions of the people died out with the subject of discussion?

A. I think the papers and people together wore it out and quit it.

Q. Have you ever heard up to the present time anything said in favor of the defendant?

A. Yes, sir. There are some people out there that think McCann is living yet.

Q. What did the majority of the people say about it?

A. Well, I don't know. I think the majority thought that McCann was dead—seemed to think that he was dead.

Q. Now, from all these circumstances and condition of affairs you think the defendant can get a fair trial in this county?

A. I think he can get as fair a trial here as anywhere. I have been over the State a good deal.

Q. You think prejudice existed against him pretty generally throughout the whole State, do you?

A. Yes, sir; worse outside the county than in it wherever I have been. Wherever I have been they asked me what we were going to do with him. I have been in a dozen counties.

Q. What did you tell them?

A. I thought we would give him what was right.

Q. What did you think was right?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.

Q. (Court.) Did you tell them what you thought was right?

53 A. Yes, sir.

Q. (COURT.) What was it?

A. To take the rope.

Cross-examination by Mr. JOHNSTON:

Q. When you answered these people as you say you did, was that opinion based upon information as to what you read?

A. Just simply as to what I read. Of course if I heard the testimony I might change.

Q. Have you any prejudice against the defendant?
A. No, sir; none at all. I can give him as fair a trial, I think, as anybody.

Redirect examination by Mr. GROVER:

Q. You read the newspapers?
A. I do.
Q. And you formed your opinion, whatever you may have, in this case, from the newspapers?
A. From the newspapers.
Q. The newspapers have been pretty strong?
A. Yes, sir; I thought the case was pretty strong.

Recross-examination by Mr. JOHNSTON:

Q. That wouldn't keep you from giving him a fair trial?
A. No, sir; I wouldn't convict a man unless I had pretty good evidence.

Mr. THOMAS W. WIENER, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.
A. Thomas W. Wiener.
Q. Where do you live?
A. Windom.
Q. That is in this county?
A. Yes, sir.
Q. How long have you lived there?
A. I have lived there going on three years.
54 Q. You have lived in the county some time?
A. About thirteen years; yes, sir.
Q. Since the 28th day of June up to the present time, have you heard any discussions among the people of this county in reference to the defendant, Barrington?
A. In a general way; yes, sir.
Q. When was the last time you heard it discussed?
A. This last week.
Q. And all along from there up to the 28th of July you heard it discussed?
A. Yes, sir; more or less.
Q. That was in this county?
A. Yes, sir.
Q. What did people generally say in these discussions?
A. It would be hard to tell. They usually say guilty—that he is guilty.
Q. They usually say that he is guilty?
A. Yes, sir; that is the general impression.
Q. Have you ever heard anything said in his favor?
A. I can not say that I ever have; no, sir.

Q. Do you have any opinion on the case yourself?
A. Only what I have gotten from newspapers.
Q. And you have an opinion from what you have gotten from the newspapers?
A. Yes, sir.
Q. What is your opinion?
A. That he is guilty.

Cross-examination by Mr. JOHNSTON:

Q. Who have you talked to recently?
A. Mr. Reynolds, last June.
Q. Is the matter generally discussed at this time in your neighborhood?
A. In my occupation of school-teacher, I don't get among the people much.
Q. You don't get among the people much?
A. I don't come in contact with the public in general.

55 Mr. JOHN H. PIPKIN, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.
A. John H. Pipkin.
Q. Where do you live?
A. I live in Old Orchard, St. Louis County, Missouri.
Q. How long have you lived there?
A. Eleven years, about.
Q. What is your business?
A. I am a surveyor, sir.
Q. Since the 28th day of June, up to the present time, have you heard this matter of Barrington discussed in St. Louis County in reference to the murder of James P. McCann?
A. Only in a desultory way; not to any great extent.
Q. Well, from what has been said, what have you heard them say in the discussions?
A. Well, I didn't charge my memory with what they did say.
Q. Substantially?
A. The general opinion was if he was guilty he ought to be hung.
Q. What was the opinion with reference to his guilt?
A. I didn't hear that expressed.
Q. Have you ever heard anybody say they thought he was guilty?
A. I don't call to mind that I did.
Q. Did you ever hear any favorable comment in his favor?
A. Speaking on one or two occasions, I heard men express the opinion that McCann would show up in proper time.
Q. Did you ever hear anybody say they thought he was guilty?
A. Only modified—no; I don't know that I ever heard anyone say that he was positive he was guilty.

Q. Did you ever hear anyone say what ought to be done with him?
A. If he was guilty, he ought to be hung.
Q. You never heard the statement without that qualification?
A. No, sir.

56 Cross-examination by Mr. JOHNSTON:

Q. You believe the defendant could get a fair and impartial trial in St. Louis County.
A. Undoubtedly.
Q. Have you talked with anybody about this case in the last two or three days?
A. No, sir; I don't believe I ever had a talk with anybody particularly; only in a casual way from what was in the paper.

Mr. JOSEPH BUSCHER, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.
A. Joseph Buscher.
Q. Where do you live?
A. Eureka—about two miles from the town of Eureka.
Q. How long have you lived there?
A. All my life.
Q. What is your business?
A. Farmer.
Q. Have you heard any expressions in reference to Barrington in connection with this charge of the murder of James P. McCann?
A. Yes, sir.
Q. What have those expressions been as of this county?
A. That if he were guilty he ought to be hung.
Q. Did you hear any one express the opinion that he was guilty?
A. I couldn't hardly say that—only the news that I got out of the papers.
Q. What was the opinion gotten from the papers?
Q. Did you ever hear anything favorable concerning him?
A. No, sir; not that I can think of.
Q. None at all?
A. No, sir.
Q. Did you ever see anything favorable—you read the papers of course?
A. Yes, sir.

57 Q. Did you ever see anything said favorable to this defendant in any of the papers?
A. No, sir.

Cross-examination by Mr. JOHNSTON:

Q. Did you ever read a statement in the papers where Barrington said he was innocent?

A. I can't recollect if I did.
Q. You don't remember what you read?
A. No, sir.
Q. How long ago has it been since you read anything of this case?
A. About a week ago, about the theatrical affair.
Q. About this case I am speaking?
A. I can't remember the exact date.
Q. When was the last time you ever talked with anybody in the neighborhood about the case?
A. It is nearly every day. People you meet talk about it—not so much now as they used to.
Q. Is there much said now about it?
A. Only about the play.
Q. We are speaking about the case; after the 28th of June it was pretty much discussed?
A. Yes, sir.
Q. Has that died out?
A. It has to some extent.
Q. Your community is not thickly settled?
A. It is generally a farming country.
Q. Did you hear anyone you spoke to express themselves that the man was guilty?
A. No, sir.
Q. But they say if he is guilty he ought to be hung?
A. Yes, sir.

Mr. HARRY FROMM, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.
A. Harry Fromm.
Q. Where do you live?
A. Eureka.
Q. Have you ever heard any discussion since the 28th day of June up to the present time with reference to Barrington's guilt or innocence—up to this time?
A. Yes, sir.
58 What are the expressions that you heard?
A. Well, it was all newspaper talk.
Q. What have you heard the people say generally?
A. I heard them say that he was guilty, they thought.
Q. Now, you are engaged in business there at Eureka?
A. Yes, sir.
Q. You keep the daily papers there at your place?
A. Yes, sir.
Q. You keep the Post-Dispatch?
A. Yes, sir.

Q. And the other papers?
A. No.
Q. People come in there and read the papers and talk?
A. Yes, sir.
Q. Did you ever hear anything in favor of the defendant said in any of these discussions?
A. Yes, sir. I heard them discuss that they thought McCann would turn up.
Q. That is the only thing in his favor that you have ever heard?
A. Yes, sir.
Q. But the prevalent opinion is what?
A. That he is guilty.

Cross-examination by Mr. JOHNSTON:

Q. Who have you last talked to about this case?
A. I couldn't say.
Q. Do you remember how long ago you last spoke to anybody about this case?
A. No, sir.
Q. You don't know that?
A. A couple of weeks back.
Q. In fact, at the time that the crime is alleged to have been committed this was then talked about pretty generally?
A. Yes, sir.
Q. But for the last month or two has it been discussed much?
A. Not much.
Q. Didn't the discussion kind of die out?
A. Yes, sir.
50 Q. Mr. Fromm, you believe that the defendant wouldn't get a fair and impartial trial in St. Louis County?
A. I do.
Q. You believe that he could not get a fair and impartial trial?
A. Yes, sir.
Q. How many people live at Eureka?
A. Probably three hundred and fifty, or something like that.
Q. And you don't know how many of those you have talked to?
A. No, sir, I do not.
Q. Have you heard two or three express their opinion?
A. Yes, sir.
Q. Have you heard more than two or three express their opinion?
A. Yes, sir.
Q. Would you say half a dozen?
A. Yes, sir.
Q. About how many have you heard use these expressions?
A. I couldn't say exactly how many—over a dozen.
Q. And you have heard some expressions of opinion in favor of him, saying that they believed McCann would turn up?
A. Yes, sir.

Q. And your idea is that a dozen or so would represent the sentiment of a community of three hundred people?

A. No, I don't.

Redirect examination by Mr. GROVER:

Q. People, as you state, frequently discuss the case in your place hemselves?

A. Yes, sir.

Q. And many times you wouldn't know the number—the exact number?

A. Certainly not.

Q. When these discussions commenced to die out, did the public mind change any in favor of the defendant at all?

A. I don't think it did.

Recross-examination by Mr. JOHNSTON:

Q. These expressions you have heard people make, were they based on the assumption that those things they had read in
60 the papers were true?

A. That is, all they knew was newspaper talk.

Mr. THOMAS MCCRADY, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. Thomas McCready.

Q. Where do you live, Mr. McCrady?

A. Windom.

Q. In this county?

A. In this county; yes, sir.

Q. How long have you lived there?

A. Since '96.

Q. What is your business, Mr. McCrady?

A. I am connected at present with the Brentwood Soda Water Company.

Q. You travel over the county?

A. Yes, sir.

Q. All over the county?

A. Yes, sir.

Q. (COURT.) Through what part of the county, Mr. McCrady?

A. Mostly over the eastern part of it adjacent to the city limits.

Q. (COURT.) How far north do you go?

A. As far as Wellston and south as far as Luxembourg.

Q. Now since June 28 up to the present time have you heard any discussion among the people of this county in reference to the defendant's guilt or innocence of this alleged crime of the murder of James P. McCann?

A. Well, I have heard it occasionally discussed; yes.

Q. Now, when you have heard it discussed, what has been said about it generally?

A. Well, I paid very little attention to the subject except on one or two occasions.

Q. Well, what was generally done in these discussions?

A. Well, the opinion generally was that the defendant was guilty.

Q. Now, did you ever hear anything said favorable to him?

A. Well, I have; yes, sir.

61 Q. What was that?

A. Well, I heard some of them say they thought Mr. McCann would turn up later on.

Q. Now, those that said that, how did they compare with the number that said they thought that he was guilty?

A. Well, I just couldn't say how they compared. I have not exactly kept track of either side.

Q. Which do you think is in the majority?

A. That is hard to say, because I just didn't pay a great deal of attention to it myself.

Cross-examination by Mr. JOHNSTON:

Q. You say you get all around to the city limits of the county?

A. Yes, sir.

Q. Luxembourg, Maplewood, and Webster?

A. Yes, sir.

Q. Those are closely settled neighborhoods?

A. Yes, sir.

Q. And you only heard the matter discussed occasionally?

A. Yes, sir.

Q. And you heard as much in his favor as against him?

A. Yes, sir.

Q. And you have only heard it discussed occasionally, you say?

A. Yes, sir.

Q. That is all.

Mr. JOSEPH J. GILLICK, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. Joseph J. Gillick.

Q. What is your business?

A. I am in the brick manufacturing business.

Q. In this county?

A. Yes, sir.

Q. Do you live in the county?

A. Yes, sir.

Q. Have you heard people in this county express themselves

62 on the question of the guilt or innocence of Barrington since June 28th last up to the present time; that is, with reference to the alleged McCann murder?

A. I believe I heard but a very few times. I think I got into conversation, talking about the matter, but once or twice, possibly three [illegible]; that is, in St. Louis County.

Q. Did you ever hear people of the county discuss it outside of the county, around town?

A. No, sir.

Q. Now, in those discussions and expressions of opinion, what have you heard them say?

A. Everyone has considered him guilty in every conversation that I have gotten in, both in the county and out of the county. Of course, out of the county don't have any effect in this case.

Q. Now, you employ a number of men, don't you, Mr. Gillick?

A. Yes, sir.

Q. And you come in contact with a number of people?

A. Yes, sir.

Q. And coming in contact with them, this seems to be, whenever they talk upon this subject, this seems to be what they say——

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Also the newspapers circulate down there, do they not?

A. Yes, sir.

Q. And have you ever heard anything said in Barrington's favor?

A. Well, no, sir.

Q. That is all.

Cross-examination by Mr. GROVER:

63 Q. Mr. Gillick, you are located right close to the city limits?

A. Yes, sir.

Q. And south of the city?

A. Yes, sir; south of the city limits.

Q. You say you can only say as to one, two, or three times you heard this matter talked over?

A. About the neighborhood of two or three times I have discussed this case with people inside of the county.

Q. And how recently have you done it?

A. That was when the occurrence took place; sometime after the occurrence took place—within a week or ten days after the occurrence.

Q. That was the time that the people were reading papers about it?

A. Yes, sir.

Q. Can you say whether or not those parties still maintain those opinions to-day?

A. No; I can not.

Q. Can you say whether they have any prejudice——

Mr. JOHNSTON. We object. That is a question of law.

Mr. JOHNSTON. I will withdraw my objection.

A. These people seemed, from what they read of the case, that they were very prejudiced against Barrington.

Q. Their expressions would be made on the assumption of what ney had heard or read was true?
A. Yes, sir. Of course that is the only way they got any informa-ion about the case.

Mr. HENRY L. WILSON, being duly sworn on the part of the de-endant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.
A. Henry L. Wilson.
Q. Where do you live, Mr. Wilson?
A. I live in Webster Groves.
Q. How long have you lived there?
A. I have lived there nearly thirty-seven years.
Q. Since the 28th day of June up to the present time have you heard any expressions of opinion concerning this defendant's case here—the State of Missouri against Frederick Seymour Barrington for the killing of James P. McCann?
A. Yes, sir; very few.
Q. You heard very few?
A. Yes, sir.
Q. What did they say?
A. When it first happened, I heard two or three people express themselves and say if the man is guilty he ought to be hung.
Q. Did they always put that to it—if he was guilty he ought to be hung?
A. Yes, sir.
Q. Did you ever hear anyone express the opinion that he was guilty?
A. No, sir.
Q. So that they thought he was guilty?
A. No. I never heard anybody say that they thought he was guilty.

Cross-examination by Mr. JOHNSTON:

Q. Mr. Wilson, do you believe the defendant would get a fair and impartial trial in this county?
A. Undoubtedly I do.

Redirect examination by Mr. GROVER:

Q. The newspapers circulate pretty thoroughly over there?
A. Yes, sir.
Q. The newspapers of St. Louis?
A. Yes, sir.
Q. All of them?
A. Yes, sir.
Q. Post-Dispatch, Star, Globe, and Republic?

A. Yes, sir.
Q. St. Louis City is the market for the people of the county?
A. Yes, sir.
Q. And most Webster Groves people do business in the city of St. Louis?
A. Yes, sir; nearly all of them.
Q. And the same is true of Kirkwood?
A. Yes, sir.
Q. And of all those suburban towns around here?
A. Yes, sir.
Q. That is all.

65 Mr. CHARLES ARMENTROUT, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.
A. Charles Armentrout.
Q. Where do you live?
A. At Kirkwood.
Q. What is your business?
A. I am not in any business at present.
Q. How long have you lived in Kirkwood, Mr. Armentrout?
A. About thirty-six years.
Q. Since the 28th of June last up to the present time, have you heard Barrington's case discussed.
A. I have heard it mentioned at times.
Q. Did you ever hear any expressions of opinion in reference to it?
A. Yes, sir; I have.
Q. What have those expressions been?
A. I have heard different opinions—some expressed themselves as to his guilt and others that they believed he was innocent. Some said McCann was living; that is the reason they thought he was innocent, and of late—that was shortly after the occurrence, but since then there seem to be more people think that he will never be convicted. I don't know why. I heard several say that.
Q. Was that from their belief that he was innocent or that he might escape from the law—which?
A. I don't know that, but I have heard that expression when the case would be mentioned. They say: "I wonder when that Barrington case is coming up," and there would be always somebody say he never would be convicted. They didn't give any reason for it. There are quite a number of people believe that McCann is still alive.
Q. The majority of the expressions that you have heard are what—that the defendant is guilty or innocent?

A. I couldn't say whether that is the majority or not. After the occurrence, of course, the majority said that he was guilty.

66 They say what they read in the newspapers, I suppose.

Q. You don't know whether it was that or not?

A. No, sir.

Q. Did you ever hear any discussion of the case since the play of "The Desperate Lord Barrington," at Havlin's theater?

A. Not of the case.

Q. Did you hear any discussion of Barrington?

A. No, sir; I heard after the play one.

Q. You never heard the play discussed?

A. No, sir; I never saw it nor heard of it.

Cross-examination by Mr. JOHNSTON:

Q. You say that right after the occurrence of the alleged killing of James P. McCann that the majority of opinions seemed to be that the defendant was guilty?

A. Yes, sir.

Q. Do I understand you to say now that that has changed—public sentiment is reflecting more in favor of the defendant?

A. Yes, sir.

Q. Do you believe the defendant can get a fair and impartial trial in St. Louis County?

Mr. GROVER. We object.

COURT. Objection sustained.

Redirect examination by Mr. GROVER:

Q. When were you served with a subpœna in this case?

A. I was not served at all. He was over there looking for me and left word.

Q. You have not heard it discussed the last two or three days?

A. No, sir. I don't know what I came over for. I heard they had a subpœna for me, and I came over.

Mr. C. H. HALL, being duly sworn on the part of the defendant, testified as follows:

67 Direct examination by Mr. GROVER:

Q. State your name.

A. C. H. Hall.

Q. Where do you live?

A. Maplewood.

Q. How long have you lived there?

A. I have lived there a little over a year.

Q. Have you heard the people of St. Louis County express any opinion in reference to this case of the State of Missouri vs. Frederick Seymour Barrington since the 28th day of June last?

A. Yes, sir.

Q. What were they?
A. I heard expressions both ways, just after it happened. I haven't heard any expressions lately.
Q. What was the expression that you heard?
A. Some were for him and some were against him.
Q. What was the prevailing opinion?
A. About evenly divided.
Q. Seemed to be evenly divided?
A. Yes, sir.
Q. Where did you hear the discussions?
A. In the store at Maplewood.
Cross-examination declined.

Mr. JAMES E. HEREFORD, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:
Q. State your name.
A. James E. Hereford.
Q. Where do you live?
A. I live at Ferguson, in this county.
Q. You may state the business you are engaged in.
A. I am president of the trust company here.
Q. You have lived in the county a long time?
A. Yes, sir; I was born in this county.
Q. Since the 28th day of June last up to the present time have you heard any expressions concerning the defendant in this case in reference to this alleged murder of James P. McCann?
68 A. Yes, sir; I have.
Q. State what those expressions were.
A. That is pretty difficult to do. I suppose I heard the case discussed twenty or thirty times by different people. What do you mean, in what respect?
Q. As to his guilt or innocence?
A. Well, I can't say. I have heard some expressions—some people have expresed their belief as to his being guilty. I can't say that I have heard anybody say he was innocent and I have heard the chances of the State to convict him—I heard that discussed both ways.
Q. Have you ever heard anything said as to his innocence?
A. Well, I have heard speculation and arguments on that subject.
Q. In those opinions that you have heard expressed have you heard any express the idea that he was guilty?
A. Yes, sir; I think I have. Whether that was by residents of the county or not I couldn't say. Some parties I heard discuss that were residents of the county.
Q. Of all the expressions that you heard inside of the county here, what seemed to be the prevailing expression?
A. So far as I know all the expressions I have heard were made by parties within the county, but I don't think they were all residents.

Working men on our building made enquiries about it. I don't think I heard a great deal of discussion by residents of the county.

Q. That discussion that you heard was in the county?

A. Yes, sir.

Q. And as to all of them you are not certain as to their absolute place of residence?

A. No, sir.

Q. You didn't know the place of residence of all of them yourself?

A. I don't know whether I know it this time. I know this, that some of them were residents of the county.

Q. What are the majority of expressions as to his guilt or
69 innocence?

A. I don't believe that I could undertake to say that. I kept no account of it. I can not state what number was one way or the other.

Q. Yet you never heard anybody speak of his innocence other than the chances of the State to convict?

A. I think that is true. As far as that part of it is concerned the discussion was largely the chances of the State to convict the prisoner.

Mr. B. M. HENDERSON, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. B. M. Henderson.

Q. What is your business, Mr. Henderson?

A. I am a lawyer.

Q. Where do you live?

A. I live in Webster Groves.

Q. How long have you lived there?

A. I have lived there eight years.

Q. Since the 28th day of June up to the present time have you heard people of this county express themselves on the merits of this case of the State of Missouri against Frederick Seymour Barrington?

A. A great many of them.

Q. What have the people said in these expressions?

A. Well, the subject bears more against him—some for him.

Q. What did the majority of them seem to say?

A. Well, the majority of the people seemed to be against him.

Q. They thought he was guilty?

A. Yes, sir; from what they had read and learned of the case.

Q. And those that are for him, what do they seem to think; that McCann is still alive, or what?

A. No, sir; I never heard any person make that assertion that they thought he was still alive.

Q. State if they stated what they based their opinion on.

A. They based their opinion on what they had read and learned of the case in general.

70 Cross-examination by Mr. JOHNSTON:

Q. At the time—the 28th of June—when this matter became public property in the newspaper, was it then that you heard the discussion?

A. Then and since.

Q. With whom have you discussed the matter recently?

A. With various persons; I guess one hundred I have talked to at different times.

Q. Who was the last one?

A. I couldn't just say.

Q. How long ago was it?

A. Not more than a couple of weeks ago. I have been asked several times if I knew when the case was coming up.

Q. And you say you talked with some one—can't remember—a couple of weeks ago?

A. I can't just remember.

Q. Do you remember what was said?

A. When it was coming up and why delay trial.

Q. Is that the general character of the discussions you heard?

A. Yes, sir.

Redirect examination by Mr. GROVER:

Q. But they did express opinions of their belief that he was guilty?

A. A great many of them did.

Q. (Mr. JOHNSTON.) Most of those in the city?

A. As a general thing, in the city.

Q. But you have heard it discussed a great deal in the county, too.

A. Yes, sir.

Q. Under all the circumstances, do you think the defendant can get a fair trial in this county?

A. I think any man should get a fair trial in St. Louis County. With all the people we have got, we surely have got some fair minded.

Q. That will do.

71 Mr. H. E. PIGGOTT, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. H. E. Piggott.

Q. Mr. Piggott, where do you reside?

A. I live in Maplewood.

Q. How long have you lived there?

A. About ten years.

Q. Since the 28th day of last June have you heard any expressions concerning this Barrington case—concerning the defendant?

A. About the time the trouble occurred I heard a great deal.
Q. What was the general expression?
A. Some for and against—pro and con.
Q. Which seemed to be in the majority?
A. The majority, taken from the press reports, were against him.
Q. Thought he was guilty?
A. That was the idea.
Q. Now, when was the last time you heard it discussed, Mr. Piggott?
A. I can't exactly tell you. Whenever anything occurred in the press someone would have something to say.
Q. And that seemed to be the prevailing opinion?
A. That seemed to be the prevailing opinion of all American affairs.
Q. Did you hear anything said about the play "The Desperate Lord Barrington," that was put on at Havlin's theater?
A. I saw an item about it, but paid no attention to it.
Q. You didn't hear any discussion about it?
A. None whatever.

Cross-examination by Mr. JOHNSTON:

Q. Mr. Piggott, you say that these parties that you talked to, that it was at the time that the papers were publishing accounts of it?
A. Yes, sir.
72 Q. And were the opinions that they expressed at that time based on the assumption that what they read was true?
A. Yes, sir; that was about the size of it. I also heard things in his favor.
Q. Frederick Seymour Barrington wasn't known in your community?
A. No, sir; not outside of his marriage.
Q. He had no friends out there?
A. No, sir.
Q. Of late have you heard the case discussed?
A. None, whatever.
Q. Does it appear that the public has ceased to take any interest in it?
A. It appears the interest has died out.
Q. Why?
A. I have heard one expression about this matter when it was coming up in the press. One party said that it remained solely with the jury whether the man was guilty or innocent.

Redirect examination by Mr. GROVER:

Q. These expressions you heard in his favor, what did they seem to be based on in reference to the alleged murder?
A. That it should be left solely to an impartial jury.
Q. These people that said that, did they base their opinion on anything—any evidence or anything aside from that?

A. I shouldn't judge so; only from press writing—press items.

Q. But the majority of the expressions that you have heard were that he was guilty, were they not?

A. I can't say I have. I come in contact with a great many.

Q. I say the majority that have expressed themselves either as to his being guilty or not guilty would say that he was guilty?

A. I can't say.

Q. But that is the case?

A. I can't say that.

Mr. JOSEPH C. MCATEE, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

73 Q. State your name.

A. Joseph C. McAtee.

Q. State your business, Mr. McAtee.

A. Newspaper reporter and attorney at law.

Q. On what paper?

A. The St. Louis Republic.

Q. Your paper circulates in this county, does it not?

A. Yes, sir.

Q. It has quite a large circulation in the county?

A. Yes, sir; to the best of my knowledge it has.

Q. Have you ever heard any expressions of opinion, Mr. McAtee, as to the guilt or innocence of this defendant by people of this county?

A. I can only remember specifically of one case, outside of what I may have heard around the court-house. I remember of a man in Bonfils who expressed an opinion as to the guilt of the defendant; he was a juryman at the coroner's inquest.

Q. What opinion did he express?

A. He believed the defendant was guilty.

Q. I will ask you if you heard any expressions of that kind which you can not individuate at the present time, that you heard the defendant was guilty—just generally?

A. I couldn't definitely answer that question. I have heard people express themselves both ways. The most of the expressions that I have heard were matters of doubt—for instance, the guilt of the defendant or to the death of the man that he was accused of killing.

Q. Have you heard any expressions as to whether or not the body that was found up there was the body of the man that was murdered, or anything of that sort?

A. Yes, I have heard people—quite a number of people—express doubt as to whether it was the man that was murdered.

Q. What seemed to be the majority of expressions on that point, Mr. McAtee?

A. The majority of expressions, I think, were that it is the man. This doubt wasn't in the majority.

74 Q. The majority expressed the opinion that it is McCann that is dead?

A. Yes, sir.

Q. You are an attorney also, Mr. McAtee?

A. Yes, sir.

Cross-examination by Mr. JOHNSTON:

Q. Mr. McAtee, you spoke of one man up there at Bonfils who expressed himself as to the guilt of the defendant?

A. Yes, sir.

Q. You say he was on the coroner's jury when the body was found?

A. Yes, sir.

Q. He was giving his opinion that way as a member of that jury?

A. This was after the jury.

Q. It was after the verdict?

A. After the verdict—yes. As I remember it, it was after the discovery of the party a week or two. I am not certain that the inquest had been finished. It was continued down here.

Q. Did those whom you heard identify the body say that they thought it was the body of James P. McCann?

A. Yes, sir.

Q. You say you heard a number say that they believed that was the body of McCann that was found?

A. Yes, sir.

Q. They were witness who identified it as the body of James P. McCann?

A. There were some witnesses but not those that I have reference to—there were some witnesses.

Q. And their statements were based on what they heard those witnesses testify to?

A. I can't say that.

Q. Do you know whether they had ever seen Mr. McCann or not—those that expressed that opinion to you?

A. No, sir.

Q. Do you know what they based their opinion on?

A. On the general discussion.

Q. What they saw in the Republic?

A. Possibly what they saw in the Republic.

Redirect examination by Mr. GROVER:

75 Q. Have you heard any expressions of opinion as to whether or not this defendant was out there at Bonfils at the time this murder was committed, or supposed to have been committed—the alleged murder?

A. No.

Q. You were present at some of those preliminary examinations too, weren't you?

A. I was present at all of them.

Q. Was there any feeling exhibited in any of them?

A. In what way do you mean?

Q. By the people that were present at the preliminary, for or against the defendant, in any way, shape, form or manner?

A. Well, my opinion at the preliminaries was that the sentiment was against the defendant—that is, the majority of the sentiment.

Q. Were you present at the time the decision was rendered, binding the defendant over—were you in the court room at that time or were you out?

A. I think I was out at the time—I was in and out during that time and I don't think I was there at the time he was bound over.

Recross-examination by Mr. JOHNSTON:

Q. Mr. McAtee, the court room was pretty well crowded with people from the city at that time?

A. Yes, sir.

Q. And you don't know whether any feeling was exhibited by any one from the county?

A. Well, I couldn't very well differentiate between them.

Q. That will do.

Mr. JULIUS SCHOENBEIN, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. Julius Schoenbein.

Q. Where do you live?

A. I live on the Hanley and Manchester roads at Bartold's.

Q. In this county?

A. Yes, sir.

76 Q. How long have you lived there?

A. I have lived there pretty near three years.

Q. Now, since the 28th day of June last up to the present time have you heard any expressions of opinion concerning the defendant in this case of the State of Missouri against Frederick Seymour Barrington?

A. Yes, sir; I have heard some.

Q. What have these expressions been?

A. The biggest part of them thought he was guilty of the crime.

Q. And they have so expressed themselves?

A. Some of them have; yes.

Q. Have you ever heard anything said in his favor?

A. Yes, sir; I have heard several remarks in his favor. I heard expressions last night from several of them, thinking there was no evidence to convict him.

Q. But you never did hear any expression that he did not do the deed?

A. I can't say that I did.

Cross-examination by Mr. JOHNSTON:

Q. You say you heard a number say last night that they didn't have any evidence to convict him?

A. Yes, sir. The argument came up last night at Murry's saloon; one or two thought he was guilty and one or two thought he wasn't.

Q. You found the sentiment evenly divided?

A. Yes, sir; seemed that way around Maplewood.

Redirect examination by Mr. GROVER:

Q. Mr. Schoenbein, that equal division of sentiment is as to whether or not they will convict him rather than whether or not he hasn't done the deed?

A. That they will not have evidence enough to convict him.

Recross-examination by Mr. JOHNSTON:

77 Q. Those that have expressed themselves that he is guilty, was that meant to imply that he would be convicted, or that he was just guilty?

A. They made the remark that they didn't think they would have evidence enough to convict him.

Q. Did you ever hear any one say that he would be convicted?

A. Yes, sir.

Q. How is the majority?

A. I think the majority think he will be convicted.

Q. You said a while ago that the sentiment where you live is about equal?

A. Yes, sir.

Q. You live at Bartold's?

A. Yes, sir.

Q. When have you discussed it up at Bartold's last?

A. I don't think since early in the summer.

Redirect examination by Mr. GROVER:

Q. So the majority is of the opinion that he is guilty, you think?

A. That is about it.

Mr. JOSEPH F. HARRISON, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. Joseph F. Harrison.

Q. Where do you live?

A. I live at Maplewood.

Q. How long have you lived there?

A. I have lived there all my life.

Q. Have you heard this case discussed since the 28th day of June up to the present time over there at Maplewood?

A. Oh, I possibly heard some remarks made about it; I don't remember.

Q. Did you hear any expressions of opinion?

A. No. I know friends here which said he ought to be hung.

Q. Now, did you ever hear anything in his favor?

A. I don't remember. I never paid enough of attention to the case to remember anything about it.

Q. Mr. Harrison, how long ago has it been since you have
78 heard any one discuss the case?

A. Shortly after it occurred. I don't just remember when it was.

Q. And you haven't heard any discussions of it recently?

A. I never paid any attention to it.

Q. Who was it, if you remember, that you heard say he ought to be hung?

A. That I couldn't say.

Q. And that is the only one you remember—one instance about that time, and you don't know who that was that passed the remark?

A. Yes, sir.

Q. And now you say you don't hear it spoken of at all or discussed?

A. No; I don't pay any attention to it.

Q. You get around Maplewood a good deal among the people, don't you?

A. Yes, sir.

Q. What is your occupation?

A. I am night watchman.

Q. And you are out about on the streets and in the stores and places a good part of the time?

A. Yes, sir.

Cross-examination by Mr. JOHNSTON:

Q. Mr. Harrison, you heard a number of people make that statement that he ought to be hung?

A. I can't say a number. I remarked the remark was made.

Q. You remember the remark distinctly?

A. Yes, sir; just one.

Q. Weren't there others you remember indistinctly?

A. I couldn't say if there was; I don't know.

Q. You never have heard anything in his favor at all?

A. I never paid any attention to it.

Q. You did hear a great deal of discussion at the time it took place?

A. Yes, sir; some.

Q. What was the majority of expression at that time?

A. I can't say that I remember more than once.

79 Q. There has not been any change in public sentiment of any kind that you know of in favor of this defendant?

A. Not that I know of; no, sir.

Mr. CHARLES PRICE, being duly sworn, on the part of the defendant testified as follows:

Direct examination by Mr. GROVER:

Q. What is your name?

A. Charles Price.

Q. Where do you reside, Mr. Price?
A. I reside at Valley Park.
Q. How long have you lived there?
A. Well, I was born and raised right around within five or six miles of the place.
Q. Since the 28th day of June last, up to the present time, have you heard any discussions or statement concerning the defendant in this case in reference to his connection with this case, or as to his guilt or innocence, or anything of the kind?
A. No, sir; I think not. I might have right after it occurred, but that is so long ago I don't remember much about it, or anything.
Q. You have not heard any expressions recently?
A. No, sir.
Q. Well, what were the expressions you heard at the time the matter occurred?
A. Well, I don't remember exactly.
Q. You don't remember?
A. No, sir.
Q. Don't you remember any statements at all?
A. No, sir; I do not.
Q. That is all.

Cross-examination by Mr. JOHNSTON:

Q. Mr. Price, what is your business?
A. I work for Mr. Paul Kurth.
Q. Valley Park is a pretty large community, isn't it?
A. Yes, sir.
Q. Do you know what the population is around there?
80 A. No, sir.
Q. You come in contact with a great many people around there?
A. Yes, sir; a good many.

Redirect examination by Mr. JONES:

Q. Mr. Price, this Valley Park where you live has increased in population recently?
A. Yes, sir.
Q. Valley Park, up to a few months ago, was a small town?
A. Yes, sir.
Q. And you are not personally acquainted?
A. No, sir.
Q. That is all.

Mr. THOMAS SHIELDS, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. JONES:

Q. What is your name?
A. Thomas Shields.
Q. State where you live, Mr. Shields.
A. I live at Eureka, in St. Louis County.
Q. In the town of Eureka?

A. I live close to it.

Q. What is your occupation?

A. Dairyman.

Q. Since June the 28th last have you heard people make expressions or statements in regard to the defendant Barrington and his connection with this crime—the alleged killing of James P. McCann?

A. I have; yes, sir.

Q. What has the general opinion been?

A. People seem to think that he was guilty of killing McCann—most of them.

Q. Did you ever hear any expressions favorable toward the defendant?

A. No, sir; I don't think I ever did. If I did I don't recollect it.

Q. Your acquaintance there is wide, is it not? You are acquainted with every one?

A. Yes.

Q. You have lived there how long?

81 A. I have lived there twenty-six years.

Q. That will do.

Cross-examination by Mr. JOHNSTON:

Q. Mr. Shields, whom was the last person with whom you discussed this case?

A. I don't remember.

Q. How long ago?

A. Well, I don't remember that.

Q. Isn't it a fact that these discussions that you refer to now took place about the 28th day of June—along there right after the time the murder is alleged to have been committed?

A. Yes, sir.

Q. Those discussions were confined to that time?

A. Yes, sir.

Q. Do you know whether or not they were based on the newspaper or a knowledge of the fact?

A. I don't know what they were based on.

Q. How many, now, do you remember to have heard express their opinion?

A. I don't remember any opinion particularly.

Q. Was there as many as two or three?

A. I don't remember that.

Q. How large a place is Eureka?

A. About three or four hundred.

Q. And you can't remember any single one?

A. No, sir.

Q. Or whether it was two or three or a half a dozen?

A. No, sir.

Q. And it was confined to the time about which the crime was committed?

A. I think so.

Mr. S. X. WEIDNER, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. JONES:

Q. Mr. Weidner, you are connected with the St. Louis
82 Globe-Democrat?

A. Yes, sir.

Q. Do you know whether or not the Globe-Democrat circulates in this county—St. Louis County?

A. Yes, sir.

Q. It has a circulation?

A. It has, but I don't know what it is.

Q. You don't know the exact number?

A. No, sir.

Q. As many as a thousand?

A. Yes, sir; I should think so.

Q. The Globe-Democrat is published in the city of St. Louis?

A. Yes, sir.

Q. About ten miles from this court-house?

A. Yes, sir.

Cross-examination declined.

Mr. EUGENE CATTLE, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. JONES:

Q. State your name.

A. Eugene Cattle.

Q. Where do you live?

A. I live at Valley Park.

Q. How long have you lived there?

A. I have lived there about seven years.

Q. What business are you engaged in at present?

A. I am in the lumber business.

Q. What business were you formerly engaged in?

A. General merchandise business.

Q. Have you heard since on or about the 28th of June up to and including the present time any expressions from people regarding the defendant, Frederick Seymour Barrington, charged with the murder of James P. McCann?

A. I have heard frequently things from the different people at Valley Park and throughout the county.

Q. What has been the expression that you have heard—what did they say?

A. Well, the sentiment seems to be that——

83 Q. (COURT.) State what they said?

A. I heard a great many of them say that Barrington is a rascal from the beginning, and he ought to be hung.

Q. You heard that different times?

A. Yes, sir; and from different people.

Q. Have you ever heard anything said in his favor up to this time by anyone raised in this county?

A. Only from people that doubt the statements from the newspaper. Some of them said that they would not take the newspaper's word for it—that they would not convict him on that ground—they would have to hear the evidence.

Q. The general opinion was that he was guilty?

Mr. JOHNSON. We object.

A. They said they thought he was guilty from what they did hear.

Q. I understood you to say that they were people in the county?

A. Yes, sir.

Cross-examination by Mr. JOHNSTON:

Mr. Cattle, who was the last person that you discussed this case with?

A. I can't recollect. In fact, I have not heard it discussed for two weeks—along about the time the play was started in St. Louis. They thought it was not right they *they* should carry on that play.

Q. Why didn't they think it was right that that play should be carried on?

A. They thought it would use influence against this man.

Q. That was something in his favor? They thought it wasn't right?

Mr. GROVER. We object.

COURT. That is argument.

Q. When did you hear anybody express anything in regard
84 to his guilt or innocence?

A. A month or so after the murder.

Q. Who was it you last heard express an opinion in regard to his guilt or innocence?

A. I couldn't call the party's name. So many told me—in fact all my friends around Valley Park spoke in that way, that he was guilty of the crime.

Q. Now, do you know, was their opinion based upon the presumption that facts they had read in the paper were true?

A. I couldn't say that.

Q. Did they have any knowledge of the facts in the case?

A. No; they had no knowledge of the facts, only what they got from the papers.

Q. And that is what they had read?

A. None of our people out there ever heard the preliminary hearing in this case. The discussions were based on what they had read in the newspapers.

Q. And it was confined to a month or two after the commission of the alleged crime?

A. The greatest talk was at the time—for a month after. Now you don't hear anything.

Redirect examination by Mr. JONES:

Q. You spoke of the play, "The Desperate Lord Barrington;" do you know of any citizens of the county attending that play?

A. No, sir; I do not.

Mr. R. C. SCHNECKO, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. JONES:

Q. State your name.

A. R. C. Schnecko.

Q. Where do you reside, Mr. Schnecko?

A. I reside at Spanish Lake.

Q. How long have you lived there?

85 A. Well, I have been in the county all my lifetime.

Q. And in that vicinity?

A. Yes, sir; born within four miles and a half of it.

Q. Since the 28th of June last have you heard expressions of opinions by residents of the county in regard to the defendant Barrington in connection with the crime of killing James P. McCann?

A. Yes, sir; pretty hot for awhile.

Q. What was said?

A. Well, the most that I could ever hear said was that the man ought to be hung for doing what he did do—if he done it—certainly.

Q. Did you ever hear anyone speak favorably about the prisoner?

A. No; not any that I can recollect—not favorably.

Q. The sentiment was against him?

A. The sentiment mostly was against him.

Q. You have heard that from the beginning and up to the present time?

Mr. JOHNSTON. We object to that as leading.

A. I have heard it off and on. At the time when they first started there was a good deal of talk about it, and between them times and here only about a week ago I had a conversation about it.

Q. Was that the last?

A. Yes; about a week ago.

Q. Has it been talked of in your knowledge in regard to the play, "The Desperate Lord Barrington" that was put on at Havlin's?

A. I seen the advertisements in the paper; that is all I know about it, and I heard a little about it.

Cross-examination by Mr. JOHNSTON:

Q. You say that people have said if he did it he ought to be hung, Mr. Schnecko?

A. Yes, sir; a good many said that, the biggest portion said he ought to be hung. The biggest portion of them said that he ought.

86 Q. You don't think that that shows a prejudice against the man?

A. They said in regard to that that Mr. McCann had been such a good friend to him and this man turned around and killed him. There has been a good deal of talk among the people on that account.

Q. Who was the last one you talked to about the matter?
A. Me and Henry Weizer.
Q. What did he say?
A. He said he ought to be hung and should have been hung long ago; that is what he said.
Q. Who was the other one?
A. Charley Shantz.
Q. How long ago was that?
A. It was about three weeks ago. We were killing hogs at the time.
Q. Did they base their statements upon facts or upon the presumption that the statements that they read in the newspapers were true?
A. They based it, I suppose, the way most everybody does—on what they read and hear and talked.
Q. Do you know whether they knew anything of the facts in the case?
A. That I couldn't say.
Q. Does anybody say that they do?
A. I couldn't say.
Q. Was F. Seymour Barrington known in your neighborhood?
A. No, sir.
Q. He has never been up there?
A. Not as I know of. There was talk about the time of the first marriage he had.
Q. Did you ever hear any expressions against him from anyone?
A. No; nothing particularly at that time.
Q. How large a place is Spanish Lake? How many people live there?
A. I couldn't say, hardly. The community runs about 170 to 200.
Q. Do you know about how many you have talked to?
A. Well, I have talked to a good many. I couldn't say how many.
Q. Is there much said about it now?
A. Nothing to amount to much; now very quiet.
87 Q. It was about the time that this happened that there was some discussion?
A. Well, once in a while they bring up the subject again. I haven't been around amongst the people lately.
Q. You have not?
A. Not this last couple of weeks.

Mr. J. L. HOEFER, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. JONES:

Q. State your name.
A. J. L. Hoefer.
Q. Where do you live at the present time?
A. I live at Eureka.
Q. And where did you formerly live?
A. Previous to that I was at Orrville.

Q. Are both places in St. Louis County?
A. Yes, sir.
Q. Are you pretty well acquainted both places?
A. I am pretty well acquainted over the county.
Q. And what is your occupation?
A. It is teaching at Eureka this time.
Q. Since the 28th day of last June have you heard the people of this county make any expression in regard to the defendant Barrington in connection with this alleged crime—the killing of James P. McCann?
A. I have heard a little expression from the people of this county. The fact that I was away from June 1st until the later part of August, when I took up school again——
Q. What have you heard?
A. I have not heard anything that I can recollect definitely further than I heard some say if all the reports were true that Barrington ought to be hung—something of that kind.
Q. You never heard anyone say that he ought not to be hung?
A. Not that I know of.
88 Q. You never heard anyone say anything favorable towards the defendant—speak in his favor?
A. Not a thing in his favor.
Cross-examination declined.

Mr. JOHN WHALEN, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name?
A. John Whalen.
Q. Where do you live, Mr. Whalen?
A. I live in the western part of St. Louis County, Missouri, within a mile of Pacific, Missouri.
Q. What is your occupation?
A. At present I am a school-teacher.
Q. How long have you lived in St. Louis County?
A. I have been in St. Louis County about twenty years
Q. Since the 28th day of June last have you heard any expressions from the people of the county in regard to the defendant, Barrington, in connection with this alleged crime of the killing of James P. McCann?
A. I have heard a few.
Q. What have they said?
A. Well, I couldn't say. I can give you, perhaps, the sentiment. I couldn't repeat anything that has been said; it is so long ago. The feeling has not been favorable.
Q. (COURT) State the substance of what was said, if you can? You can state the substance?
A. Well, that Lord Barrington, if he committed that murder, should be hung.

Q. Have you ever heard anyone say that they considered him guilty?

A. Yes; I have.

Q. You have heard this discussed frequently?

A. Well, I haven't so much lately.

89 Cross-examination by Mr. JOHNSTON:

Q. Mr. Whalen, you say that you have heard people say that if he committed that murder he ought to be hung?

A. If he had committed that murder he ought to be hung.

Q. How many have you talked to—do you know—discussed the case with?

A. Well, I haven't talked with very many concerning this murder.

Q. Do you remember about when was the last time you talked to anyone?

A. Last night was the last time.

Q. And with whom was that?

A. My father.

Q. And do you remember what he said about it?

A. Well, he said that if Lord Barrington had committed that murder he ought to be hung.

Q. You had mentioned the fact that you were subpœnaed as a witness?

A. Yes, sir; that is what brought up the conversation.

Q. Do you remember who you talked to before your father?

A. No, sir; I don't remember. There was a play, I think in St. Louis—some pictures came out in the paper; I had occasion to speak about that, but there were very few words spoken in the family circle.

Q. In your own family?

A. Yes, sir.

Mr. FRED A. REED, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. Fred A. Reed.

Q. Where do you live?

A. I live at Ferguson.

Q. How long have you lived there?

A. I have lived there going on thirty years.

Q. What is your ocupation?

A. I am in the insurance business in the city of St. Louis.

90 Q. Since the 28th day of last June have you heard any expressions from people in St. Louis County referring to Mr. Barrington because of the killing of Mr. James P. McCann?

A. I am not sure on the date, but if that was the time the crime was supposed to have been committed I heard a great deal of talk.

Q. What was the substance of it?

A. That time there was a great deal of talk on both sides of the question. It seems to have quieted down a whole lot. In the last few months I heard very little talk about the case one way or the other.

Q. Have you heard any talk favorable towards Mr. Barrington?

A. I have heard him commended for some acts that he has done; yes, sir.

Q. What acts were referred to?

A. When he was commended?

Q. Yes.

A. Why, I heard some people say, the time he married that girl, she got what she was looking for and he ought to be commended—that he done a public service and it was a good way of guarding other girls against titles—she got no more than what she was looking for.

Q. What was the character of the people that made those remarks?

A. Why, as good as there is in St. Louis County, I think.

Q. Did you ever hear anyone use the expression before that Barrington was guilty?

A. I think I heard expressions both ways—that he was and he wasn't, and if he was he couldn't be proven guilty.

Q. Which of those expressions prevailed—which was the prevailing expression?

A. I would hate to say, but I think opinion is about evenly divided. There are a whole lot of people won't convict a man on circumstantial evidence, and, then, there are others that would say they would until the time comes.

Q. Those people that expressed the opinion that he wouldn't be convicted, would they base that upon the fact that he was innocent or that he couldn't be proven guilty, or lack of evidence?

91 A. I never heard anybody say that he was innocent at all.

Q. You never heard people say that they thought he was innocent?

A. I heard some people say that they thought he was innocent—that this was a put up job or a money-making job for the World's Fair as the press has stated and I think people agree with the press.

Q. Those that think that way, how do they compare with those that think he is guilty?

A. In what way?

Q. Are they few in numbers compared with those that said he was guilty?

A. I think they are about evenly divided.

Q. Did they think that this was a scheme in which the defendant was a party?

A. Some people thought that way for advertising purposes—a fake or something.

Q. And they based their expressions that he could not be convicted on that assumption?

A. On that assumption and on circumstantial evidence.

Cross-examination by Mr. JOHNSTON:

Q. You are, I believe, the mayor of Ferguson?

A. Yes, sir.

Q. About how large a town is Ferguson?

A. A town of about two thousand inhabitants.

Q. And you come in contact with people of your town and back and forth on the Wabash Railway?

A. Yes, sir; about as general as anybody.

Q. You say you have heard expressions both ways equally?

A. Yes, sir; for and against the lord—yes, sir.

92 Mr. WILLIAM T. MCDERMOTT, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. William T. McDermott.

Q. Where is your residence, Mr. McDermott?

A. I reside at Florissant, Missouri.

Q. How long have you lived there?

A. I have lived there about nine years, I believe—between eight and nine years.

Q. What is your occupation?

A. I am a teacher.

Q. In the public schools?

A. Yes, sir.

Q. Since the 28th day of last June have you heard any expression from the people in reference to Mr. Barrington, who is charged with the murder of James P. McCann?

A. After the crime was supposed to have been committed, after the papers were publishing it, I heard the people talking about it.

Q. What was the substance of that conversation—expression?

A. Well, it was just this, that a great many of the people thought that he had killed McCann—that he was guilty. Some of them thought that probably McCann was still alive.

Q. Those people then, that thought McCann was still alive, did they say anything to the effect that Mr. Barrington was connected with some scheme?

A. I have heard a few. It was conjectured more than anything else, I think, that probably they had entered into some kind of a scheme in order to create a sensation.

Q. Did you ever hear any favorable comment on the defendant?

A. Well, I don't see that I did. No more than just what I told you, that some of the people—the majority of the people, I think, thought that McCann was dead, but there were some few that thought this had been a scheme entered into by Barrington and McCann for the creation of a sensation.

Q. Those that you heard say that McCann was dead, did they say Barrington was guilty?

A. Yes; they thought that he committed the crime.

93 Cross-examination by Mr. JOHNSTON:

Q. Mr. McDermott, those opinions that you have heard different ones express—they were based on newspaper reports?

A. Yes, sir.

Q. And, so far as you knew, parties making the statements knew nothing of the facts?

A. No, sir. I think all opinions were based on newspapers.

Q. Both for and against him?

A. Yes, sir.

Q. Did you ever hear persons express themselves as in favor of hanging him whether there was evidence for it or not?

A. No; I think not. I don't think they would think of such a thing.

Q. Then the only reason given for expressions of opinions was the presumption that what they had read in the newspapers was true?

A. Yes, sir; that newspaper reports were true.

Q. Is this matter discussed at the present time in conversation?

A. No; I think it has died out to a considerable extent.

Q. When was it discussed?

A. About the time the crime was committed.

Q. How large a place is Florissant?

A. It has about eight hundred inhabitants.

Q. About eight hundred inhabitants?

A. Yes, sir.

Q. You come in contact with the people a good deal through the town?

A. Well, yes, I do, considerable; yes, sir.

Redirect examination by Mr. GROVER:

Q. You said that you thought that they formed their opinion from what they had read in the newspapers, did you not?

A. Yes, sir.

Q. Did you ever hear anyone say that—do you know that or do you just think it?

A. I don't think they formed their opinions otherwise, considering the fact that they did not know either of the parties. That is my supposition; I don't think it is true.

Q. You don't know whether or not they might have talked with witnesses in the case?

A. I do not.

94 Q. Do you know of any change in opinion there at any time; you spoke of it dying down; is it slumbering, or has it died out?

A. I think it died out because the newspapers quit publishing it

and the newspapers drifted onto other subjects. I think there was no change of opinion that I know of.

Recross-examination by Mr. JOHNSTON:

Q. Do you know of anyone up there to-day that believes the defendant is guilty or who has said that he believes he is guilty?

A. Well, I don't know that any of them believe it positively. I believe that they believe that it should be proven.

Q. That will do.

Mr. ZACH J. MITCHELL, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. Zach J. Mitchell.

Q. Do you reside here in St. Louis County?

A. Yes.

Q. How long have you resided here?

A. I have resided here about twenty-eight years, I think.

Q. You are a member of the bar?

A. Yes, sir.

Q. Mr. Mitchell, since the 28th day of June up to the present time have you heard any expressions of people of this county in reference to this Barrington case and the probable innocence or guilt of the defendant?

A. Yes; it has been a general topic of conversation and discussion.

Q. Now, has it been a topic of conversation and discussion all along during that time?

A. Well, from the commission of the offense for several weeks after that it was discussed, and then there was an apparent lull until the preliminary examination, and then during that preliminary it seemed to be a general topic of discussion, and more or less since after the indictment by the grand jury.

95 Q. And then when the play was produced there was a revival?

A. Yes; I heard that discussed pro and con.

Q. You heard expressions of people of this county during all this time?

A. Yes, sir; as far as I came in contact with them.

Q. Just state what the nature of those expressions were generally.

A. Well, now, you want my summoning up of these expressions?

Q. Just generally what they were—substantially what were those expressions?

A. Well, as I say, from the commission of the offense, the impression then seemed to be—and Barrington's arrest and being charged with it—the impression was that he was guilty.

Q. Does that expression of the people ever change any that you have heard?

A. None that I know of, excepting in individual conversations when the question came up, and you couldn't avoid discussion of the matter, I have known parties to change their views.

Q. Now, the prevailing expression of opinion was that he was guilty?

A. Oh, yes.

Q. And that is the prevailing expression to this time, is it not, Mr. Mitchell?

A. I don't know—I couldn't say that. I haven't heard it discussed, anyhow, since the preliminary examination, about the time of the filing of the indictment. There are other topics interesting the public now.

Q. There was something said about it at the time the play was produced?

A. Well, the expression at that time, as I learned from the play, seemed to be that it was inopportune and was not really fair—that seemed to be the conclusion of the sentiment of the people, that I have gathered.

Q. Now I will ask you, in the beginning and up to the time of the finding of the indictment, was the expression pretty strong, or was it rather weak as against the defendant?

A. Among those that I came in contact with and conversed with it was strong. I never came in contact enough with any per-
96 son to bring up the subject myself. All the conversations that ever I had were with people who, presuming that a lawyer knew everything, inquired what I thought about it, and that lead on to a conversation. I informed them in those conversations that they ought not to have any opinion—ought to reserve their opinion until there was some evidence to substantiate it, and their sentiment was the other way—that they had about made up their minds that he was guilty.

Q. You never sought to have a conversation with them?

A. No; I always avoided it; told them I did not know anything about it and I had no opinion of my own. Then they would persist in carrying on a conversation.

Q. That was the general sentiment, that he was guilty?

A. Well, yes; from my contact with people.

Q. That is all.

Cross-examination by Mr. JOHNSTON:

Q. Who did you ever hear say that he thought he was guilty?

A. Mr. Johnston, as I told you, I don't remember one person. I don't recognize one person out of ten by their names. It seems that a great many people know me and I don't know them. They know me by name, and these conversations having been on the street cars

and upon the railway cars and general contact, I don't remember the persons—that is, I don't remember their names.

Q. You say that they would ask you your opinion about it?

A. That would be about the first thing, "What do you think about the Barrington case?"

Q. Did it seem they wanted your opinion about it as a lawyer?

A. Yes; and I always refused to give it. I told them I studiously avoided the man and had no opinion.

Q. Do you know whether or not those opinions that you are impressed those people had were formed on facts or on newspaper talk?

A. I was satisfied they were not founded on facts. I told them
97 there were no facts to base an opinion on. They were familiar with the fact that an offense had been committed.

Q. Did they agree with you?

A. When I was forced into conversations they did not, but when I would reason with them and say that I had no knowledge of any facts sufficient to justify reaching a conclusion, possibly they would concur in it. Some did and some didn't. I have known some to say he ought to be hung on general principles. Some said they had seen him in the court-room and his countenance was enough to hang him. They seemed to be impressed with the enormity of the offense, and some one ought to be punished and thought he was the man, because he was charged with it.

Q. Do you know what localities these people came from that you talked to?

A. In Clayton we meet people from all over the county—every township in the county, Mr. Johnston.

Q. In all these conversations you say you impressed on them the fact that there were no facts to form an opinion on?

A. My position was that there were no facts in the case that I knew of yet.

Q. Don't you believe, then, that that would have a tendency to influence an opinion in favor of the defendant?

A. With some it would, and some it would not.

Q. That is all, Mr. Mitchell.

Mr. HENRY HOKE, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name?

A. Henry Hoke.

Q. Mr. Hoke, where do you reside?

A. Bellfontaine post-office.

Q. In St. Louis County?

A. Yes, sir.

Q. How long have you lived there?

A. Ever since '69.
Q. Are you in business up there?
A. Yes, sir.
Q. Since the 28th day of June last up to the present time, have you heard this Barrington case discussed?
98 A. I heard it when it first happened. I read it in the paper.
Q. Did you hear any discussion of it after the play was put on down at Havlin's Theatre?
A. No. I saw that in the paper, but paid no attention to it.
Q. You have heard expressions of opinion in this case?
A. Yes, sir; when it first commenced I heard some farmers around there say, the way the papers were, if that is true, that he ought to be convicted.
Q. Did you hear any of them say that they thought that from what the papers said that he was guilty?
A. Some said he wasn't guilty and some said he was.
Q. Some thought he was and some thought he was not?
A. Yes, sir.
Q. Which was the majority, those that thought he wasn't?
A. I couldn't tell you that, but the majority said they didn't see how they could convict him on the evidence that there was.
Q. You never heard any of them say they thought he was innocent?
A. Yes, sir; a good many says they thought they couldn't—that they had no evidence.
Q. You understand there are two things—one is proving the man guilty and the other is the man being actually guilty and you can not prove it?
A. Yes, sir.
Q. Those people that said—made expressions in his favor, they thought they couldn't get the facts to convict him?
A. That is right.
Q. Did you ever hear anyone say that they thought he was innocent—he didn't do the deed?
A. I never heard anyone say that.
Q. The fact was the people thought the jury thought he was guilty, but there wouldn't be evidence enough to prove it?
A. They never said that.
Q. Did they infer that he was guilty?
A. They said they didn't think they had evidence enough to prove that he was guilty.
Q. You heard some say they thought he was guilty?
99 A. They said if he was guilty they ought to punish him for it.
Q. Did you ever hear any say that they thought he was guilty?
A. No, sir; I never did. There was a man there yesterday that said if he was on the jury he couldn't convict him on circumstantial evidence.

Cross-examination by Mr. JOHNSTON:

Q. You come in contact with a great many people coming from different parts of the county?

A. Yes, sir.

Q. You are in the general merchandise and saloon business at Bellefontaine post-office?

A. Yes, sir.

Redirect examination by Mr. GROVER:

Q. When were you served, Mr. Hoke?

A. I was served a week ago.

Q. Was there any conversation at the time with reference to this matter?

A. Yes, sir; the only conversation I had yesterday was with the doctor.

Q. I mean the time you were served with the subpœna?

A. No; nothing ever said. The majority didn't know about it at my place.

Q. Your place is in the northwest part of the county?

A. Yes, sir.

Q. And a great many people come there from the adjoining county?

A. No, sir; but from St. Louis they stay with me at night.

Q. That is all.

Mr. CHARLES EDWARDS, being duly sworn on the part of the defendant, testified as follows:

Direct examinaton by Mr. GROVER:

Q. State your name.

A. Charles Edwards.

Q. Where do you live, Mr. Edwards?

A. I live at Eureka.

Q. That is your post-office?

A. Yes, sir.

Q. You live two or three miles from there?

100 A. About two miles and a half

Q. You are a farmer?

A. Yes, sir.

Q. How long have you lived there?

A. I was born and raised there.

Q. Have you heard any expressions of opinion or sentiment by people of this county since the 28th day of June last up to the present time in reference to this Barrington case?

A. Yes, sir; I have heard some.

Q. What has been that expression?

A. The majority has been that he should have been given a trial and if he was guilty of the offense charged that he ought to be properly dealt with.

Q. Have you ever heard any of them express their opinion from anything they had heard or read that the defendant was guilty?

A. Some people read the newspaper and take it for granted that what they see there is the truth. Those are in the minority.

Q. You have heard expressions of that kind from those that read the newspapers, that he was guilty?

A. Yes, sir.

Q. Now, you say those people are in the minority?

A. Yes, sir; in my neighborhood.

Q. Have you heard any expressions lately?

A. I heard some yesterday, after I got the subpœna to appear here.

Q. What was that expression?

A. Well, that he ought to be tried—this thing of putting it off so long they didn't think it was right—putting the State to expense and keeping the man in jail, whether he was guilty or not—he ought to be given a trial and a chance to prove his innocence.

Q. Was there any expression that he might be guilty of this offense?

A. I can't say. I heard no one express themselves that he was guilty.

Q. That they thought that he was guilty?

A. No, sir; they didn't think he was guilty.

Q. Did you ever hear any one say that they thought that he was innocent?

A. Well, I can't say that. A good many of them heard about
101 him before, and, of course, that didn't make them his friends, but they didn't say that that was the reason why he should be adjudged guilty of this without being given a fair trial.

Q. What is the expression about the defendant himself concerning his acts, independent of this offense that he is charged with?

A. Well, some criticise him for his former notoriety in this State, and some say that the other party was to blame just about as much as he was.

Q. Which is the prevailing opinion?

A. Many of them thought he got about what he deserved, and the other party did, too. They were about equally divided.

Q. Did you ever hear any expressions up there about his being an all-around crook or anything of that kind?

Mr. JOHNSTON. We object to that.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. What expressions have you heard concerning other affairs that the defendant is said to be connected with among your people up there?

A. I know of only two things that I have ever heard of him having any connection with. That was that affair in Kansas City and

the present one, with the exception, of course, I have heard of this play in St. Louis, but I never heard anything for or against that.

Q. Now, what was the expression of opinion—what was it in reference to this Kansas City affair that you speak of?

A. Well, that he was, like a good many men, a fortune hunter, and she was a title hunter, and that both got about their just deserts.

Q. It is the prevalent opinion, then, that he was a fortune hunter?

A. Yes, sir; that is what they got from the newspapers.

Q. You don't know where these people got their opinion that expressed these things, do you?

102 A. They got it from the newspapers; that was the only place they could have gotten it.

Q. What has been the expression up there among the people as to whether or not Mr. McCann is dead or alive?

A. Well, very little expression along that line. They have never heard of him being alive. No one ever saw anything in the papers to the effect that he was alive, and his family seems to not know where he is, by paper reports, so they are led to believe that he must be out of the way.

Q. Dead?

A. Well, dead or disappeared because of some crime or scheme that he had gotten into.

Q. And the scheme that you refer to is one they believe Barrington is connected with?

A. Well, I have heard one or two express the opinion when it first came out that they thought that there was something behind it—that they were running this scheme together; but there has nothing been said along that line of late. That took place soon after the report came out.

Q. Now, if there had been an expression of opinion up there with reference to whether or not that body found out at Bonfils Station was McCann's remains or not, you will please state what those expressions were?

A. It seemed from newspaper statements in connection with the trial, some thought it was and some not.

Q. What do the people out there in your neighborhood think?

A. They are about equally divided on it.

Q. Now, those that believe that it was McCann's body that was found out there, what is their prevalent statement as to whether or not Barrington killed McCann?

A. Well, those think that he did the deed.

Q. Those that think that that was McCann's body think that Barrington did the deed?

A. Yes, sir.

Q. Now, which is the prevailing side of the people with reference to that being the body of McCann—those that believe it was or those that believed that it was not?

103 A. They are about equally divided, I think.

Q. That is all.

Cross-examination declined.

Mr. LEON DE LISLIE, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. JONES:

Q. State your name.
A. Leon De Lislie.
Q. Where do you reside, Mr. De Lislie?
A. I reside at Florissant.
Q. You are the mayor of Florissant?
A. Yes, sir.
Q. You have lived there how long?
A. I have lived there half a century.
Q. Since the 28th of June last, what expressions of opinions have you heard among the people out there with reference to the defendant, Barrington, in connection with the murder of James P. McCann?
A. I read in the papers and heard expressions on it pro and con.
Q. What is the substance of that?
A. Well, the people were excited at the time and directly after that for months. They were very angry, and expressed themselves. Since that time they have changed.
Q. I understand you to say they expressed themselves in favor of hanging?
A. Well, they were very much aggravated over the girl. I heard several express themselves in a strong manner; but the thing has changed since then.
Q. How do you know that they have changed?
A. I don't know why, but I know they have changed their conversation in regard to Mr. Barrington.
Q. Do they say why they have changed it?
A. No, sir. The supposition was—ninety per cent of the people thought he was guilty two months after the crime was committed or supposed to have been committed.
Q. How many of the people have changed?
A. That I don't know.
104 Q. Do you know of anyone?
A. Yes, sir; I know of some.
Q. Can you tell me about what proportion have changed?
A. In our immediate vicinity?
Q. Yes.
A. Twenty per cent, about.
Q. Have you heard any of these express any opinion—make any statement as to why they changed their opinion?
A. No; they don't say why, but they seem to have changed their minds.
Q. In what respect has that been manifested?
A. By saying that—they first said that he ought to be hung, and then they said they wanted to give him a fair trial.
Q. The change was then, that they wanted to give him a new trial?
A. Yes, sir; about ten per cent or twenty per cent of them.
Q. Did you ever hear anyone say he was innocent?

A. Yes; two of them say so yet.
Q. Who are those two parties?
A. That is a delicate matter to answer.
Q. You say that is a delicate matter. Have they told you their opinions and requested you not to tell anyone that they believed him innocent?
A. No. But it is considered an honor on my part to keep it secret.
Q. Well, that is all.

Cross-examination by Mr. JOHNSTON:

Q. Mr. De Lislie, the opinions that you heard expressed shortly after the occurrence—do you know whether they were based upon a knowledge of the facts or on newspaper reports?
A. Newspaper reports and general remarks.
Q. And do you know whether or not the persons expressing those opinions had any knowledge of the facts in the case?
A. Not any more than I had. No more than what they heard and read.
Q. Has public sentiment been gradually changing in favor of the defendant there since that time?
A. I think so. They are getting more moderate in their views about the matter.
105 Q. That will do.

Mr. JOHN PREHN, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. JONES:

Q. State your name.
A. John Prehn.
Q. What part of St. Louis County do you live in?
A. I live about a mile and a half west of Eureka.
Q. The extreme western part of the county?
A. Yes, sir.
Q. What is your occupation there?
A. Farming.
Q. Are you well acquainted in St. Louis County?
A. Only around Eureka, not any further.
Q. Since the 28th of last June what has been the expression that you have heard from the people in reference to Mr. Barrington, charged with the murder of James P. McCann?
A. Well, I haven't heard any that I can remember.
Q. What is the general sentiment in the community?
A. I haven't heard any.
Mr. JOHNSTON. Then I object.
A. I can't recollect that—I heard a lot of men discussing the subject.
Q. You have heard of the case, Mr. Prehn?

A. Yes, sir; and read a little of it in the papers, but not enough to amount to anything. I let it pass out of my mind and paid no attention to it.

Q. You never heard anyone say that he was innocent or say anything in his favor?

A. No.

Cross-examination declined.

Mr. JOHN CLAFFEY, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. John Claffey.

106 Q. Where do you live, Mr. Claffey?

A. I live at Eureka.

Q. Mr. Claffey, have you heard any expression of opinion concerning this case of the State of Missouri against Frederick Seymour Barrington since it arose last June?

A. I have heard some; yes, sir.

Q. What has been the opinion of the people of this county?

A. As a rule the opinion has been that he was guilty.

Q. Have you ever known that general expression to change?

A. Recently it has died out almost altogether.

Q. The conversation died out?

A. Yes, sir.

Q. There has been no change of opinion in its die out?

A. I have heard very little of it and therefore I am not capable of judging it.

Cross-examination by Mr. JOHNSTON:

Q. Mr. Claffey, you live at Eureka?

A. Yes, sir.

Q. How many have you heard say that they believed that the defendant was guilty?

A. I couldn't say that. I paid so little attention I don't remember the parties.

Q. How long ago was it?

A. Well, recently I have heard very little of it.

Q. What you heard was about the time of the alleged offense?

A. Yes, sir.

Q. And do you know whether or not these expressions were based on a knowledge of the facts, or whether they were based on the presumption that the reports which they read in the newspapers were true?

A. They were based on the newspapers.

Q. And of late you have heard no expression at all?

A. No.

Q. Well, did they say that if the newspaper reports were true that he was guilty?

A. Yes, sir; along that line.

Q. You do not know to-day what is the sentiment of feeling there?

A. Well, no, sir; I can't say.

Q. That is all.

107 Mr. GROVER. I offer in evidence the St. Louis Post-Dispatch of Sunday, June 28th, 1903. Pages 1–12. I offer pages 1 and 2 on this subject of the Barrington case—nothing else.

(This paper is marked "Exhibit A," and is in words and figures as follows:)

"LORD" BARRINGTON ACCUSED OF MURDERING HIS FRIEND JAMES P. McCANN AND THROWING HIS NUDE BODY INTO A POND.

Chief Desmond believes that the prisoner is mixed up in the tragedy and Barrington admits that he was with McCann near the scene of the murder—Hid McCann's jewels in the patrol wagon—Accused man when placed on the police rack confessed that he wrote the letter purporting to have been sent by McCann to his wife which told her that he was with friends.

F. Seymour Barrington, the English felon and bogus "lord" wh. recently served a workhouse sentence after marrying Miss Grace Cochrane, of Kansas City, through fraudulent pretensions to wealth and title, was last night locked up at police headquarters charged with the murder of his friend and benefactor, James P. McCann, whose nude body was found in a pond near Bonfils, 15 miles from St. Louis, yesterday afternoon.

Chief of Detectives Desmond stated at 1 o'clock this morning, after sweating Barrington several hours, that he believed the prisoner guilty of the murder of McCann or of participation in the crime. At that hour Barrington was sent to a cell and Mrs. McCann and others who had been taken to police headquarters were released to return at 10 o'clock this morning, when Chief Desmond's efforts to make Barrington confess will be renewed.

The theory of the police is that McCann was murdered by his friend Lord Barrington and his body thrown into the stone quarry after being stripped of its clothing. The clothing, it is believed, was removed and hidden in different places about the surrounding country to prevent identification.

The fact that the shoes were found fifty feet apart and a quarter of a mile from the body and the pocketbook a block from
108 the shoes is held to support the police theory. Further search is expected to reveal the rest of the clothing.

INCRIMINATING FACTS AGAINST BARRINGTON.

Admitting robbery to be the motive that would cause Barrington—a convicted burglar and adventurer—to commit murder, he knew

that McCann had plenty of money from the time McCann gave him a fifty-dollar bill at their first meeting.

A motorman and conductor testify that Barrington and McCann got off their car on the St. Louis, St. Charles and Western Railway on the night that McCann disappeared not 200 yards away from where McCann's body was found yesterday.

The conductor and motorman heard shots and a man's agonized cry for help a few moments after the two men disappeared in the darkness.

Barrington admitted to Chief Desmond that he had gone out on the car with McCann and that he had walked back himself. He would not explain McCann's disappearance, contradicting himself frequently.

McCann's gold watch and diamonds were found on Barrington. Barrington wore McCann's hat when he reached home.

At 9 o'clock the next morning Barrington entered the McCann home, weary, bruised, and muddy, and his clothes were blood stained.

Barrington admits that he wrote the note after McCann's disappearance and purporting to come from McCann stating that the latter was well and in the hands of friends.

A revolver was found in Barrington's trunk, the caliber being the same as that of the cartridges picked up near where McCann's body was found.

Barrington has been supported in ease by McCann, a fortunate and generous gambler on the races, at McCann's hotel, the Leland, 2901 Franklin avenue, since Barrington got out of the workhouse. On the night of June 18 Barrington and McCann left the house, ostensibly to get medicine for Mrs. McCann.

109 Mrs. McCann never saw her husband again and did not see Barrington again until the next morning.

Barrington said he and McCann had gone to the Suburban Garden after leaving the drug store; that they had met two men and two women.

He told a circumstantial story of a fight outside of the garden and some distance in a field later, in which he was beaten and knocked down by the women's companions while trying to defend McCann from the same treatment.

He said that McCann drove off in a carriage with the attacking party, leaving him in a coma on the ground. Rain had revived him at daylight and he had made his way home.

Mrs. McCann reported her husband's disappearance to the police last Thursday. Barrington was arrested and sweated by Chief Desmond. He repeated the story he had told Mrs. McCann, with additional detail, and guided detectives over the scene of the alleged fight. He was released on Chief Desmond's order Friday afternoon.

Mrs. McCann ordered Barrington to leave the house yesterday. He had sent his trunk to Union Station and was about to leave himself when he was arrested.

The body accepted by the police and by Mrs. McCann to be that

of McCann was buried late yesterday afternoon near the spot where it was found.

The body was in an advanced state of decomposition, and the coroner of St. Louis County, who held an inquest and ordered the burial, did not determine the cause of death.

BODY WAS FLOATING IN QUARRY POND.

A farmer living near Bonfils Station, St. Louis County, reported to Mounted Policeman Patrick Kirk yesterday afternoon at 2.30 that he had found the nude body of a man floating in the water at a deserted stone quarry 200 yards from the St. Louis, St. Charles and Western Railroad track.

Policeman Kirk called up Capt. McNamee and was at once
110 detailed on the case with Mounted Policeman Robert Ball and Detective Gratiot Cabanne to learn if the body was that of James P. McCann, reported missing several days ago.

They went to the quarry pond and, owing to the fact that the place is in St. Louis County, could not remove the body from the pond without the consent of the coroner.

They saw that it was badly decomposed, evidently having been in the water for a long time.

They noticed that the hair and mustache were light and the man was of medium size.

As they were unable to identify the body, they took up a search of the neighborhood for evidence of a struggle, the police department having accepted the theory that the body was that of McCann.

They secured from children a pair of patent leather shoes that were found in the wheat field a quarter of a mile distant.

The shoes were low cut and bore the name of "Swope" on the sole. They were tied with a bow and a hard knot on top of that, evidently having been wrenched from the feet without being untied.

They were found about fifty yards from each other.

At a distance equal to about one block from the shoes a black leather pocketbook was found. It was between the shoes and the quarry pond in which the body was found.

The pocketbook was of alligator skin and was made with two compartments, which were empty.

A short distance from the pocketbook four Smith & Wesson 38-caliber cartridges were found. They had not been exploded. The policemen took these articles to the Leland Hotel at 2901 Franklin avenue, where they were shown to Mrs. McCann, and after one look she exclaimed:

"Oh, my God! He is murdered!"

Detective Cabanne asked for Barrington, and learning that he was
111 at the hotel, arrested him and took him to the mounted district police station in Forest Park at 4.30. He was then taken to Capt. McNamee's office, where he remained until taken to the Four Courts at 9.30.

Conductor Ike Bennett, of Elm street, St. Louis County, and Motorman John Oellian, of 5352 Easton avenue, employed by the St. Louis, St. Charles and Western Railroad, reported to the police that on the night of June 18 that had as passengers from St. Louis two men who answered the descriptions published of Barrington and McCann.

THREE SHOTS WERE FIRED.

Two men got on the car at either the 10 or 11 o'clock trip, they were not certain which, and went to Bonfils Station, at that time the terminal of the road, owing to the flood having stopped traffic west.

When the car reached Bonfils the men got off, and as they left the car the smaller and lighter of the two men, which would have been McCann, handed the conductor a card on which was the name of the Leland Hotel and the address at 2901 Franklin avenue.

Bennett is quite sure of the address, although he has thrown the card away.

After both men had left the car and while the trainmen were waiting for the time for leaving Bonfils they heard three shots.

Neither of the men returned to St. Louis on their car.

Mrs. Charlotte Krueger, who lives 100 yards from the quarry, heard the shots that night and also heard a man screaming for help.

At the time of Barrington's detention at the Mounted District Police Station, Bennett and Oellien were out on a trip and did not return until after 8 o'clock, and orders were left at the stable for them to hurry to the station to settle the question as to the identity of Barrington as their passenger on that night.

SWEATING RACK FOR BARRINGTON.

Barrington reached the Four Courts at 9 o'clock, and after
112 being taken to the headquarters of the Central District in the basement of the building, where he was searched, he was conducted to the office of Chief of Police Desmond. There he was taken in hand by Chief Desmond, Chief of Police Kiely, and Captain McNamee, of the mounted district.

Chief Desmond charged him with the murder of McCann, and the "sweating" at once began.

About 11.30 o'clock Barrington's trunk was brought into the Four Courts and opened. Inside were found Barrington's revolver and a silver-headed cane.

Mrs. McCann was then brought into Chief Desmond's office and asked if she could identify any of the property. She identified the cane as belonging to her husband.

When she left the room Barrington asked if she was under arrest. When told that she was, he said "That isn't right. That lady oughtn't to be under arrest. She hasn't done anything."

While Barrington was being sweated the room was almost filled with detectives, police officers, and newspaper men.

The presence of the crowd greatly annoyed Barrington, and every ten or fifteen minutes he asked Chief Desmond to rid the room of "these newspaper men." He thought everybody in the crowd was a newspaper man. He made this request every time his interrogagors got him to a fine point.

Two or three times during the night Chief Desmond asked the crowd to step out of the room. The people did as requested, but when the doors were reopened the crowd surged back in.

Throughout the "sweating" Barrington was very cool. He was quiet in manner, and spoke with the English accent. Whenever he was pressed to a fine point he said, "I don't know."

When he was asked how McCann's watch and chain and diamond ring got under the seat of the patrol wagon, where the officers are confident Barrington put them, he answered, "I don't know."

After admitting that he was on the St. Louis, St. Charles and Western Railroad with McCann on the night of June 18, and that he got off the car with McCann at some place, the name of which he
113 claimed not to know, he said that the fight which he has talked about so much in which McCann was attacked by two men, took place at the point where he and McCann left the car.

"A short time ago you said the fight occurred in Suburban Garden. How do you explain the contradiction between your statements?" said the detectives.

"I don't know," was the reply.

It was noticed that the thumb nail on Barrington's left hand is badly bruised, and that during the sweating he held his right thumb under his palm, where no one could see it.

At 1 o'clock he was sent to a cell for the night.

BARRINGTON IDENTIFIED BY THREE RAILROAD MEN.

Ike Bennett, John Oellien, and Charles Sack, employes of the St. Louis, St. Charles and Western Railroad, positively identified Barrington at the Four Courts last night as the man whom they saw accompany McCann to Bonfils station on the night of June 18, and as the man who walked back along the railroad tracks the next morning.

Barrington was taken from the mounted district police station to the Four Courts, and in the lobby of Chief Desmond's office he stood between the two detectives waiting for the men who were to make the identification.

He was cool and careless, seeming to be much more composed than at the time of his release from the workhouse after his short term there.

Capt. McNamee, of the mounted district, who is in charge of the case, was present.

IDENTIFIED BY THREE MEN.

John Oellien, the motorman on the car on which McCann and Barrington made the trip to Bonfils, was first admitted. He looked

at the men in the lobby, pointed out Barrington, and said, "Yes; that is the man."

Charles Sack, of 637 Elm street, St. Louis County, an employe of the St. Louis, St. Charles and Western Railroad, was next admitted. He pointed out Barrington as the man he had seen
114 walking back along the track at 7 o'clock in the morning of June 19. He said that when he saw him Barrington was wearing an imitation Panama hat, a black suit with a Prince Albert coat, and looked as though he had spent the night in the woods.

Ike Bennett, the conductor on the car on which Barrington and McCann were passengers, came next. Bennett is young and has taken much interest in the case. When he saw Barrington he exclaimed: "That is the man; there is no doubt about it."

Barrington walked back a few steps, then turned and said to Bennett:

"Are you sure?"

"To the best of my recollection," answered Bennett, "you are the man."

"When was that?" Barrington asked.

"The night of June 18," replied Bennett, and he withdrew from the lobby and Barrington laughed and remarked:

"He said to the best of his recollection."

Then Barrington commenced talking on other subjects with those near him.

The strengthen the identification of the other passengers as that of McCann, the police had procured a picture of McCann, and after the identification of Barrington, this was shown to Bennett and Oellien, and they positively identified the picture as that of the other passenger.

The identification of the body depends upon the identification of the shoes and the pocketbook and the description given by the farmer finding it.

It was buried under the direction of Coroner Koch, of St. Louis County, yesterday, after being taken from the pond.

Conductor Bennett, in his story to the police after the identification of the picture of McCann as that of the second passenger and Barrington as the other passenger, said:

"Seven men got on the car, but for the last fifteen minutes of the trip McCann and Barrington were the only passengers."

115 "They sat in separate seats, but were on very friendly terms and laughed and talked.

"Neither was drunk, but McCann may have had a few drinks. They seemed to be in good spirits, and while I wondered where they were going, I did not ask them.

"When they left the car I did not see which way they went, and it was about ten minutes later that we heard the shots."

Capt. McNamee said that he no longer had any doubt but that Barrington is the murderer of James P. McCann.

Barrington is the coolest man concerned in the investigation. On

the ride from the mounted district he laughed and talked to those in the patrol wagon and asked at each turn what street they were on.

He talked about the weather, his book, and other things that did not pertain to the case, and did not forget to thank Capt. McNamee for his kindness since he had been arrested. He said to Capt. McNamee:

"Ordinarily one arrested on as serious a charge as I am, would expect harsh treatment, but you have been kindness itself. I thank you for it, and when I am out of trouble I will remember you."

Louis Hesserich, of 6971 Theodosia avenue, is another employe of the St. Louis, St. Charles and Western Railroad who will be asked to identify Barrington.

Hesserich is employed at the DeHodiamont power house and he saw a man walking in from the western part of the line on the morning of the 19th who answered the description of Barrington.

"LORD'S" BLOOD-STAINED CLOTHES WERE WASHED AND HIDDEN AWAY.

Charles W. Morrison, a negro servant at the Leland Hotel, told the following story to the Post-Dispatch last night:

"Barrington came home on the morning after McCann disappeared, and I noticed that his clothes were muddy and bloody. His face was haggard, and he looked as if he had been drunk for a week. He said to me, 'Here, get my clothes quick, and wash them good, and get all the spots out of them, and put them where nobody will see them.'

"Where have you been?" I asked.

"Oh, I was out with McCann and McCann did something terrible. He assaulted two women. A lot of men jumped on him and I went to his assistance. They beat and kicked me into insensibility."

"Later I said to him, 'Where is McCann?'"

"'He's gone off,' was the reply. 'He might never come back. I'm going to run the house while he's gone. If he ever does come back I'll kill him.'"

"Barrington said: 'Here, here. You are a negro servant. Don't be asking me any questions. Do what you are told and be d—— quick about it.'"

Mr. Morrison said that he went to the stable with Barrington's clothes and washed the trousers, coat, and vest thoroughly. Then he hid them in a barrel in the stable.

Later Mrs. McCann and Mrs. Jessie Morrison, wife of Charles Morrison, found the clothes, took them out of the barrel, and hid them in a box in the stable.

To Chief of Detectives Desmond, Mrs. McCann said that she put the clothes in the box because she did not want Barrington to know where they were, for she feared he had done something to her husband and thought the clothing might be used as evidence.

Charles Morrison told Chief Desmond that since the disappearance of McCann, Barrington had been with Mrs. McCann almost

constantly, and that the two had held many spirited conversations. At some of these conversations Barrington wept.

Morrison also said that both before and after the disappearance of McCann, Barrington had taken Mrs. McCann down town and treated her to ice cream.

Mrs. McCann admitted that she had been down town with Barrington.

117 The McCann house is at 2901 Franklin avenue. It is a two-story brick house called "The Leland." Barrington occupied a room on the second floor.

The members of the McCann household consisted of James McCann, his wife, Jessie, and Una Morrison, a boarder named Brown, the cook, and house servant.

Barrington sometimes ate his meals with Mr. and Mrs. McCann.

HOW THEY REACHED THE TRAGIC SPOT.

Barrington and McCann were at the Suburban Garden together on the night of June 18.

Barrington tells of trouble at the garden with some women, and whatever may have happened there Barrington and McCann walked down the Suburban track to Wellston, the terminal of the St. Louis, St. Charles and Western Electric Railroad.

The Wellston terminal is at the end of the Easton avenue line at the city limits, but a few hundred yards south of the Suburban Garden, where many persons take the car to go to their homes in St. Louis County, after visiting the garden, and where Easton passengers to the Suburban Garden take the cars to return down town.

The St. Louis, St. Charles and Western Electric Railroad runs almost directly northwest to the Missouri River opposite St. Charles.

For several days, about June 18, Bonfils station was the western terminal of the road, because of the flood inundating the tracks of the lowlands west ofthere.

Bonfils station is a short distance south of Bonfils, the town on the Wabash Railroad. It is lonely about the station, and it was at this place that Barrington admits that he and McCann left the electric car and from there where he walked back to St. Louis the next morning.

Bonfils is about 15 miles from the St. Louis city limits, over 2 miles from St. Charles.

118 CONFESSES HE WROTE THE BOGUS LETTER TO MRS. M'CANN.

Barrington admitted he wrote the letter which he showed to Mrs. McCann purporting to be from her husband.

It was as follows:

"CENTRALIA, MO., *June 22, 1903.*

"FRED: Am all right in the hands of friends. Take good care of Jessie. Do not send the $300 I telephoned for.

"E. M. for JIM."

Barrington explained that the fictitious letter was written by him solely with the object of allaying the distress of Mrs. McCann, who was ill and harassed over her husband's failure to return home.

He explained to her the matter of the demand for $300 by saying that a few days previous he had been called to the long-distance telephone by a woman. This woman, he said, stated that she was acing for McCann, and wanted $300 sent at once to him at Centralia.

When Barrington was arrested on the night of June 25, he told Chief Desmond that he had received a letter from another person. He refrained from disclosing that he had indited it himself.

About 11 o'clock last night Barrington admitted to Chief of Detectives Desmond that he went with McCann on the St. Louis, St. Charles and Western Railroad on the night of June 18, but says he does not know where he got off.

He admits, however, that he and McCann got off together. He also admits that he walked back, but he says he did so because he didn't have any money, having given $27.50 to McCann four blocks from the Suburban Garden.

He has not yet explained what became of McCann or what the two men were doing on the St. Charles car at that time of night.

HAD M^CCANN'S JEWELRY IN THE PATROL WAGON.

The gold watch and diamond ring of James P. McCann were found under the driver's cushion of the patrol wagon in which
119 Barrington was driven to the Four Courts after his arrest at the Leland Hotel Saturday afternoon.

When arrested, Barrington was placed in the front part of the vehicle and he managed to secrete the vaiuables under the cushion in front of him.

After he was taken from the wagon a policeman found the watch and ring.

He turned the valuables over to Capt. McNamee of the mounted district, who held them for a favorable moment to present them during the "sweating" process.

At midnight Barrington's trunk, which had been taken to Union Station for shipment from the city, was seized by detective Greeley and brought to the Four Courts. It was searched, but nothing compromising was found.

Then, in the presence of Barrington, Mrs. Cann, Chief Desmond, and Chief of Police Kiely the watch and ring which had been turned over by Capt. McNamee were produced.

Mrs. McCann broke down and wept when she saw them. "They are my husband's property," she said between sobs.

Barrington appeared greatly surprised. He was asked to explain how they came under the cushioned seat during his ride in the wagon.

"I really don't know," he said in his soft, well-modulated tones, and would offer no further explanation.

BOGUS LETTER AND TELEGRAM AND LETTER RECEIVED.

F. Seymour Barrington became a boarder at the home of James P. McCann, the sporting man and owner of horses, who resided at 2901 Franklin avenue, six weeks ago.

Previous to that time and following his release from the workhouse by Mayor Wells, he was the manager of a saloon at the corner of Broadway and Chestnut street. While there he met McCann, and the latter became interested in the bogus lord.

McCann was promoter of a project to build a hotel near the World's fair grounds and offered the position of manager to
120 Barrington, which the erstwhile workhouse prisoner accepted.

McCann and Barrington were frequently seen driving city behind a team of the turfman's fast trotters.

Thursday evening, June 18, McCann disappeared from home When he left he was accompanied by Barrington.

Barrington appeared alone at the McCann house the following morning in a battered and bedraggled condition and was unable to give a coherent account of what had become of McCann.

On Friday, the day following her husband's disappearance, Mrs. McCann received a telegram from Centralia, Mo., purporting to be from her husband, requesting her to send $300 to him in Sedalia.

Barrington also claimed that he received a letter a day or so later from McCann in which he said he would be home in a few days.

Mrs. McCann, greatly alarmed when her husband did not return, consulted her lawyer, Albert Davis, last Thursday, who went to Chief Desmond and placed the case in his hands.

Barrington was taken into custody that night pending an investigation of McCann's disappearance.

He told Chief Desmond that on the night of June 18 Mrs. McCann was ill. He accompanied McCann, he said, to a drug store to get some medicine for her. Instead of attending to the errand they boarded a suburban car and went to Suburbar Garden.

There they met two men and two women. Barrington stated that McCann took one of the women for a walk. Soon screams were heard and the whole party rushed to the assistance of the woman.

When he arrived on the scene, Barrington declared, the two men were beating McCann with clubs. He went to McCann's assistance, he said, and was beaten and kicked into unconsciousness.

Before he became unconscious, he told Chief Desmond, McCann borrowed all the money he had, $27.50, after which McCann entered a vehicle with the men and women and drove away.

121 Barrington said he lay in the open air all night and in the morning walked three miles to the McCann home. He allayed Mrs. McCann's fears with various excuses.

He asserted that McCann was ashamed of the scrape in which he had gotten and that was his only reason for remaining away from home.

Barrington was accompanied to the alleged scene of the assault by several detectives and went over the ground, giving a minute account of what had happened.

He was then returned to the hold over. There being no further evidence against him he was discharged Friday night.

HAD M'CANN'S HAT THE DAY AFTER MURDER.

John Oellien, a motorman on the St. Louis, St. Charles and Western Railway, who lives at 6118 Easton avenue, told the detectives that on the Thursday night on which McCann and Barrington got on the car going west about 11 o'clock. He is confident that Barrington was one of the men, for he has seen a tintype of him.

He is confident that McCann was the other man, he told the detectives, because that man gave him a card on which were the words McCann and Leland Hotel. At the time he thought nothing of the incident and threw the card away. McCann and his wife conducted the Leland Hotel.

BARRINGTON HAD M'CANN'S HAT.

He also said that McCann wore a straw hat. This hat was worn by Barrington when he returned to the Leland Hotel the next day.

The two men, so the motorman says, rode to Bonfils Station, about a mile this side of the Missouri River. Immediately after they got off, Mr. Oellien says he heard three shots.

About an hour later Charles Sack, who is also a motorman on the same road, and who also lives at 6118 Easton avenue, while running west, so he tells the detectives, saw a man walking in the direction of St. Louis, about a mile from Bonfils.

122 The description of that man answers that of Barrington. Mr. Sack says that a handkerchief was wrapped around the man's neck, and that his clothes appeared muddy and bedraggled. When he came within the light of the car he put his hand over his face.

SAYS HE SAW BARRINGTON.

Charles Meyer, a negro, living at 612 Wells street, also tells of having seen a man answering the description of Barrington about 1 o'clock Friday morning.

Meyer was walking west on the railroad track and he met this man going east. When the man passed he turned his eyes to the ground, so he says.

If Barrington walked into St. Louis from Bonfils Station it would take him about as long to make the journey as the time from the hour he is supposed to have been seen near Bonfils until the time he appeared at the hotel.

WANTED TO BE ALONE WITH MRS. M'CANN.

Una Morrison, the cook and house servant of the McCann family, was the only person who occupied the McCann house besides Mr. and Mrs. McCann and Barrington.

She was in the house during the past week while Mrs. McCann was away and Barrington and Mrs. McCann were at home.

While Mrs. McCann and her sister were at the Four Courts Saturday evening Una stood on the back porch of the McCann house too frightened to go in the house after the strange death of its master. She spoke as follows in regard to Barrington:

"That man Barrington is the strangest man I ever saw. Ever since Mr. McCann's gone away he's been trying to get me to go away.

"He wanted to be alone in the house with Mrs. McCann, but I wouldn't go for him. I wouldn't leave Mrs. McCann. She's the best woman I ever knew.

"He never talked mean, but he couldn't sleep. He couldn't eat much either, and if anybody said anything to him he'd cry.
123 His feelings were easily hurt.

"He used to sit down at the table and eat a few bites, then put his hands up to his face and start to cry. He pretended that he cried because he felt so sorry for Mrs. McCann.

"He was all the time telling me stories about a blonde woman. He said that a beautiful blonde woman came here every day to see Mr. McCann when Mrs. McCann was down town. I was here all day, and I never did see a blond woman around here. He told Mrs. McCann that her husband had gone to Chicago with the blond woman.

"Bogus telegram and telephones used to be coming to this house all the time this week.

"Last night I got scared staying here, so I went home, but a friend of the family came and slept in the house.

"When Barrington went off with Mr. McCann he wore the same kind of hat he has on in this picture in the Post-Dispatch.

"They went away on Thursday night. Barrington came back Friday morning about 8 o'clock."

TRUCKMAN TELLS OF HAULING A TRUNK TO UNION STATION.

John Morris, who is supposed to be the man that hauled Barrington's trunk to the Union Station, made the following statement in the presence of detectives and a representative of the Post-Dispatch last night:

"About 3 o'clock Saturday afternoon a man came to my place at 909 North Cardinal avenue and told me to go to 2901 Franklin avenue and get a trunk. He said, 'Be sure you say nothing about this to anyone, and do not tell where you are going.'

"He went ahead of me towards the Leland Hotel, and when I got there he gave me the trunk and told me to take it to the Union Station. Again he told me to say nothing about hauling the trunk."

From the description of the man given by Morris it is thought the man was Barrington.

124 M'CANN'S FRIEND STONER IS ARRESTED ON SUSPICION.

Warren W. Stoner, who is stopping at the St. James Hotel with his wife, was arrested by the police last night on suspicion of having been one of the two men whom McCann met in Suburban Garden on the night of June 18.

He admits that he is a gambler, and says that he is a personal friend of McCann. He is well known at the race tracks and is known by the name of "Stotty."

To Detectives Greeley and Dwyer he said last night in the presence of a representative of the Post-Dispatch:

"The last time I was in McCann's company was during dedication week of the World's Fair, when I was with him most of the week. I never saw Barrington except on one occasion, and that was in the barroom of the St. James Hotel.

"I was not with McCann on the night of June 18.

"When I saw in the extra editions of the papers that McCann was killed, I went to the Leland Hotel to see Mrs. McCann, but she was not there."

Stoner is said to have been supported at the St. James Hotel by McCann. On this point he said: "It is true that I got money from McCann. On one occasion I pawned Mrs. McCann's diamond ring for $200."

He refused to tell where he lives.

BODY OF MURDERED MAN WAS IMMEDIATELY BURIED.

Coroner Koch, of St. Louis County, ordered the body found in the quarry buried immediately after he had seen it.

It was in an advanced state of decomposition and no feature of the face was recognizable when the coroner viewed it.

When it was first found by the coroner it had a light mustache and light hair, but these features were also wanting when the police arrived on the scene.

No clothing or other means of identification were found near it, except the shoes and pocketbook which were picked up in a wheat field several hundred yards away from the pond.

125 The pocket book identified as McCann's was found half way between the pond and the spot where the shoes were picked up.

The body of McCann was first found Friday night at 5.30 by a negro named Louis Tucker.

Tucker told several persons of the ghastly discovery, but they wouldn't believe him. When his tale was verified Saturday morning,

Coroner Koch, of St. Louis County, took charge and conducted the inquest.

As the body was in a decomposed condition, it was deemed best to bury it immediately near the quarry.

It will be removed later and interred properly.

CARTRIDGES FOUND IN BARRINGTON'S TRUNK SAME AS THOSE FOUND BY POLICE.

In Barrington's trunk the detectives found a .38-caliber revolver and a box of cartridges. About a dozen cartridges were missing. Cartridges of the same size were found by Detective Cabanne near the pond where the body was found.

The detectives examined the revolver carefully, but could find nothing to indicate that it had been used recently. It may have been cleaned, however.

In the trunk the detectives also found a cane belonging to McCann. Barrington said this was the cane with which McCann struck him over the nose. He brought the cane home with him on the morning of June 19, and he told Mrs. McCann that Mr. McCann gave it to him in Suburban Garden.

MRS. M'CANN'S SISTER TELLS HER STORY OF THE DISAPPEARANCE.

Mrs. McCann's sister, Mrs. Mamie Evans, arrived at the McCann home, 2901 Franklin avenue, Saturday morning. Mrs. McCann sent for her in her loneliness and worry after her husband's disappearance. She has no other relatives in St. Louis.

Mrs. Evans told the following story of her brother-in-law's disappearance:

MRS. M'CANN'S SISTER TELLS HER STORY.

"My sister and Mr. McCann have not known Barrington
126 long. Mr. McCann felt sorry for him when he had that trouble in March. He sided with him and brought him to his house after he was released from the work house. He often gave him money. He roomed here and sometimes ate his meals with my sister and her husband.

"One day he said to McCann, 'You should have a revolver around here.' Barrington used to take charge of things when Mr. McCann was away. My brother-in-law trusted him so much. At Barrington's suggestion my brother-in-law bought a revolver which he gave to Barrington. We think that that is the revolver with which McCann was killed.

"They were sitting out in front Thursday evening, June 18. Barrington said, 'I have a dreadful headache. Has anyone a headache powder?' My sister said that she too had the headache, and after a little while Barrington and Mr. McCann started off for the drug store to buy some tablets.

"That was the last time Jessie ever saw her husband. She sat up all night waiting for him to come home. In the morning Barrington came home and told a story about getting into trouble with two men and said that McCann had gone away.

"Jessie worried all week. She went to her lawyer and asked him if she couldn't have Barrington sent from the house. The lawyer advised her to let him stay until further investigation was made.

"She knew that McCann did not have much money with him when he went away—only a five dollar gold piece. She went to the three banks where she keeps the money deposited and asked if her husband had drawn any money. Each time she went she was told that he had not. She knew that if he was alive that he would need money.

"They told her stories, saying that he was only having a good time and would come back in a little while.

"She wanted to offer a reward for him, but she didn't like to do so, because she thought it might make him angry if nothing
127 was the matter and might make trouble.

"After the detectives placed Barrington under arrest he told strange stories. He put advertisements in the papers purporting that they came from Jessie. She made him withdraw them. Then he said that she and her husband were connected with a matrimonial. That is not true. Afterwards he telephoned down town and contradicted the statement.

"My sister could not bear to have him in the house any longer. This morning she gave him orders to move. He sent his trunk away at three o'clock in the afternoon, but came back himself afterwards.

"All during the day when my sister was away he came in every now and then to ask for my sister. We told him that she had gone out for a little while. We did not want him to know that she had gone to identify her husband.

"When she went with the detectives she did not think that she was going to find her husband. They told her that the dead man was short of stature. Her husband was a tall man.

"They did not make her look at his body. They showed her his purse and that was enough. She recognized it at once.

"They brought her home and she was almost too weak to talk. Meanwhile the officers came for Barrington. He was as cool as you please.

"He came down stairs and shook hands with the man that arrested him. My brother-in-law was about 47 years of age. My sister is31 years old. They have no children."

Mrs. Jessie McCann is 31 years old. She is short of stature, but is well formed. Her hair is dark brown and wavy. She was overcome with grief when she returned from the identification of her husband's property Saturday afternoon.

She wept, not hysterically, but after the fashion of a woman who

has realized the worst of the trouble over which she has been in suspense for days.

Mr. GROVER. I will now offer the Monday evening Post-Dis-
128 patch of June 29th, 1903—the first page and the continuation thereof on sixth page, in reference to the Barrington case, with pictures.

(This paper is marked "Exhibit B," and is in words and figures as follows:)

"Barrington decided to become a fugitive only when he learned That McCann's body had been found in the Bonfils quarry pond.—Mrs. McCann's story of a $5,000 motive."

After Mrs. McCann had identified the body of the man taken out of the stone quarry as her husband, James P. McCann, she was taken to the home of Mrs. Margaret Lennon, who lives near the electric railway station.

She was completely unnerved by the terrible experience undergone, and wept bitterly to find all hopes that her husband was not dead forever shattered.

Her sister, Mrs. Evans, whose home is in Windsor, Ky., and others sought to comfort her, but her grief would not be assuaged.

At four o'clock Mrs. McCann made the positive identification. Just two hours later, after she had in a manner regained composure, while seated at the Lennon home she made an analysis of the motive leading up to the murder of her husband.

"I believe that was a well-defined plot to kill Mr. McCann perfected," she declared.

"From the evidence produced I am firmly convinced that Barrington is his slayer. Whether he did it alone or was assisted is yet to be proven.

"PLOT TO SECURE $5,000 FROM ME."

"Robbery and hopes of obtaining $5,000 which was in a safety deposit vault in a local bank were undoubtedly the motives.

"Just how Barrington, in the event he consummated his crime, hoped to obtain this money through me, I do not know, but I believe he had formed some plan by which he thought it could be accomplished.

129 There is nothing about my past by which he could have had any hold over me.

"All the man ever knew of us is that we were his benefactors, especially my husband.

"Jim was one of your generous-hearted, open-handed men. A hard-luck tale would always affect him and he gave to the unfortunate on the slightest provocation.

"Barrington knew this and did not fail to avail himself of this at every opportunity.

"We had heard something of his past record, but my husband sai
he did not believe it all. He thought Barrington was an underdo
who had been given the worst of it, and in his generosity he tried t
help him.

"Six weeks ago we moved into the Leland Hotel, at 2901 Frankli
avenue, and fitted it up with new furnishings. Barrington was re
ceived into our place shortly after we took possession.

"He was a very entertaining man and we grew to believe hi
stories. We are not the first the man has deceived.

"My husband gave him money for his personal expenses, clothe
him, and when they went out together Jim paid the bills.

"Barrington learned a great deal about our affairs and was awar
of what money Jim had. He was with him frequently when m
husband played the races and executed a number of commissions i
a small way for Jim.

"My husband told me recently that Barrington had said that h
had a pension or annuity of $1,700 coming from relatives in Englan
He also expected to obtain damages from the suit he had institute
against his brother-in-law, James Cochrane, of Kansas City, for th
assault at the Elliott home on West Belle, when his pretentions t
wealth and nobility were exposed.

"We believed him. Jim told me that Barrington had a plan t
borrow $1,000 from a man in the country. He asked Jim to accon
pany him to the man's house and act as a witness to th
130 transfer of the money and witness the signing of the papers.

"On the fateful Thursday night, when I saw my husban
last alive, it had been arranged for us to accompany Barrington an
dine with some friends of his.

"I had a headache, but was dressing in my room when Jim entere
and told me that it was a mistake about my accompanying them tha
night. Barrington told him, he said, that he was to be the only on
to accompany him that night; that my invitation was for the Thur
day night following.

"Jim offered to go to the drug store to get some headache tablet
before they went off to keep the engagement. He never returned.

"It is my belief that Barrington lured him into the country a
Bonfils, under the pretext of obtaining the $1,000 from some perso
who does not exist, in order to carry out a fell purpose.

"At first, after Barrington returned the following morning, h
deceived me with stories that Jim had gotten into a scrape, which i
investigated, would get him in serious trouble.

"To lull my suspicions he showed me that note he had written t
himself, purporting to be from my husband. He arranged for tha
telephone message also to aid in the deception and keep the crim
from being revealed.

"Finally, I decided to go to Attorney A. C. Davis and ask his aid
If Jim was in trouble I did not want to injure him. I loved him to
well; but I became suspicious of Barrington, especially after h
wanted to get $300, which, he said, was to be sent to Jim.

"I told my attorney that there was nothing in the case of which I feared; that it should be wide open. After the investigation began it wasn't long until my husband's fate was known.

THE DEADLY PARALLEL DRAWN ON BARRINGTON BY THE POLICE—LIEUT. ROBEY MURDERED BY BARTON.

1. Lieut. Robey, an officer of the British army, was murdered in England in 1881.

131 2. George Barton, a private soldier of his company, who has since been identified by photographs as Barrington, was acting as valet to the lieutenant at the time of the murder.

3. Lieut. Robey had just received a large allowance of money from his estate and it was missing after his murder.

4. Barton lived at the lieutenant's quarters and knew of the money. He had been allowed many privileges not usually allowed servants on account of his polished manners, his place being almost that of a companion to his superior.

5. Barton won his place as valet and companion to the officer through his ready conversation, refined manners, and evidence of education.

6. Barton found the body of the murdered officer and gave the alarm.

7. Suspicion pointed to Barton, but he was never arrested. No one else was under suspicion.

8. When Mrs. Celeste Miller Barton, wife of Barton, accused him of murdering Lieut. Robey he only sneered and did not deny the charge.

JAMES P. M'CANN MURDERED BY ———

1. James P. McCann, a follower of the races, was murdered at Bonfils, St. Louis County, June 18, 1903.

2. Barrington, a former private in the British army, was his constant companion and assistant and went with him to the scene of the murder.

3. McCann's pocketbook was empty when found, his diamonds are missing, and his watch and chain were found on Barrington.

4. Barrington lived at McCann's house, handling his money for him and doing errands.

5. Barrington attracted McCann's attention and won his friendship through his polished appearance and ready conversation.

6. Barrington was the last man to see McCann alive, and that was at the place of his murder.

7. Suspicion pointed to Barrington and he was arrested.
132 There is not evidence enough against any other person to warrant arrest.

8. When Barrington, or Barton, was identified as the man who went to Bonfils with McCann he sneered and replied: "Well, you say to the best of your knowledge I am the man." Later he admitted that the identification was correct.

ALLEGED MURDERER TRIED TO ENGAGE ROOM ON GARRISON AVENUE AS A PERMANENT BOARDER, BUT ON FRIDAY HE ORDERED HIS TRUNK SENT TO UNION STATION—BARRINGTON CONFESSES HE WAS WITH M'CANN IN QUARRY.

Sheriff of St. Louis County will dredge the pond and make a thorough land search for the dead man's missing clothes and other important clews.

The Post-Dispatch has secured information which the police say is important in that it strengthens the theory that Barrington intended to remain in St. Louis until he fleeced Mrs. McCann out of all her money, and that he changed his mind and prepared to leave the city only when he learned that a nude body had been found near Bonfils.

On last Friday night, subsequent to his release after the first arrest and following Mrs. McCann's order that he leave her house, he applied for a room at 622 North Garrison avenue, where he had formerly roomed, saying he would be permanent. No room was given him, and he said he would go elsewhere.

Now that the nude body discovered Saturday in the quarry pond near Bonfils station has been identified as that of McCann, and the fact that he was murdered established, the evidence is convincing to the authorities that Barrington not only murdered his friend and benefactor, but after the deed returned to the home given in charity to woo the widow that he might get his money as profits of the crime.

Chief Desmond said this morning that Mrs. McCann was not implicated in the crime. Subsequently Mrs. McCann was identified by post-office inspectors as the proprietress of a matrimonial
133 bureau, who had been under surveillance.

Barrington admitted this morning that the story of meeting men at Bonfils Station, the last of his fabrications, was false. He now has no statement uncontradicted that is not incriminating.

MATERIAL EVIDENCE.

Up to this hour the evidence collected, which will be presented to the grand jury at the trial, is:

1. Identity of Barrington and McCann as the two men who went to Bonfils Station the night of June 18, established by Conductor Ike Bennett and Motorman John Oellien, of the St. Louis, St. Charles and Western Railroad.

2. Barrington's admission that they were along there, seeing no one.

3. Barrington walked back from Bonfils Station, wearing McCann's hat and admitting that stains on his shoes and clothing were from blood.

4. McCann's cane and other property were found concealed in the trunk that Barrington was anxious to get out of town.

5. Barrington had McCann's watch and diamond when arrested.
6. Barrington's admissions that the story he told as to his own and McCann's movements, and their motive for so doing, were false.

CIRCUMSTANTIAL EVIDENCE.

1. McCann's fatal wounds were from 38-caliber bullets. Barrington had a revolver of that caliber in his trunk. The cartridges found near the quarry were the same.
2. Barrington tried to allay the suspicions of Mrs. McCann by sending her notes, written by himself, purporting to come from McCann and persons with him.
3. Barrington enlisted the services of his friend, Asa Mitchell, of 119 South Broadway, to write notes for him, explaining the whereabouts of McCann, and also telephone Barrington and Mrs. McCann to the same effect.
134 4. Barrington's complete failure to tell the truth to the police when arrested Thursday on suspicion of knowing McCann's fate.
5. The report of two shots soon after Barrington and McCann had left the car at Bonfils Station, which Barrington, admitting that he was there, had failed to explain. McCann was shot twice.
6. Denial of Barrington that the body, later positively identified by Mrs. McCann, her sister, Mrs. Evans, and her friend, Brown, was that of his friend, benefactor, and victim, McCann.
7. The complete failure of Barrington to reveal the identity of persons engaged in the difficulty at the Suburban Garden, the only motive he had given the police for making the trip.

EVIDENCE OF THE PLOT.

1. Barrington's admission that he had visited Bonfils Station previous to the trip with McCann on the night of the murder, only after being identified by Mrs. Lennon and a boy who saw him there.
2. Barrington's invitation to Mr. and Mrs. McCann to visit Bonfils Station, explaining it by a fictitious story of securing a loan on English army pension papers.
3. Barrington's knowledge that McCann usually carried large sums of money and that both he and Mrs. McCann had money deposited that was at her command.
4. Barrington's knowledge that McCann had a large sum of money in a safety deposit box that was accessible to Mrs. McCann.
5. His knowledge that Mrs. McCann was conducting a matrimonial bureau, and that she was threatened with trouble from the post-office inspector and was only saved from prosecution by a lack of evidence. Barrington had been in the office and may have known facts concerning the bureau that could have been used as a lever to extort money had his smiles and plausibility failed.

6. The system of explaining McCann's absence began so
135 soon after his murder that Barrington must have planned it before. The first effort was a note that was showed Mrs. McCann immediately on Barrington's arrival at her house, where he made his home. The letter could not have been written at Bonfils.

7. Barrington's immediate arrangements to have money sent to McCann at Centralia, Mo. His urging Mrs. McCann to send it. His evident intention to confiscate the money, should he be asked to send it.

8. Barrington's efforts to ingratiate himself into McCann's good favor just previous to his arrangement to make the trip to Bonfils Station, and his acceptance of the business partnersip for a hotel in order to learn of McCann's financial standing.

BARRINGTON PREPARED TO LEAVE HURRIEDLY.

The Post-Dispatch obtained information Monday afternoon which the police consider to be of the utmost importance, as it indicates that Barrington had no intention of leaving St. Louis until Saturday afternoon, when he learned that a body had been found in the quarry pond at Bonfils.

This new piece of information also strengthens the theory that Barrington intended to remain in St. Louis and "work" Mrs. McCann for the money.

From the time of his release from the workhouse last winter up to when he took up his residence with the McCann's at the Leland Hotel, Barrington occupied a front hall room in the second floor flat at 622 North Garrison avenue, which is conducted as a rooming house by Mrs. Bettie Hopkins.

Barrington roomed at Mrs. Hopkins' house until June 8, the day he went to McCann's.

That was the last seen of him by Mrs. Hopkins until last Friday night, when Barrington returned and applied for his old room.

That was the night on which Mrs. McCann says she ordered Barrington to leave her house and never return. It was also the
136 night previous to the day on which the body was found floating in the quarry pond.

Mrs. Hopkins refused to take Barrington back, telling him that she had no room vacant. He then left, but did not say where he intended to go.

The next afternoon when Barrington was told of the finding of the body in the quarry pond, although it was not known at the time whose body had been found, Barrington packed his trunk and had it removed to the Union Station.

Barrington was brought to Mrs. Hopkin's house by Gillespie, the saloon keeper at Broadway and Chestnut street by whom he had been employed as manager after his release from the workhouse.

Barrington was given a small room in the hall in the front part of the house with which he seemed pleased the moment he saw it.

He was a model roomer, Mrs. Hopkins says, until he lost his position at Gillespie's saloon, and after that until he left for McCann's he was about the house so much that his presence annoyed her.

FOURTEEN-YEAR-OLD BOY CALLED ON HIM.

After leaving Gillespie's, Mrs. Hopkins says Barrington told of her of receiving fifty dollars from McCann, and also showed her a card bearing McCann's name and the name of the Leland Hotel.

"He frequently spoke to me of Mr. McCann," said Mrs. Hopkins. "He told me that Mr. McCann wanted him to manage nine hotels which McCann was thinking about opening. He told me that McCann had asked him to come over and manage the Leland.

"I saw a great deal of Col. Barrington while he roomed here. He took his dinner every day. I addressed him by the title of colonel, because that is all that Mr. Gillespie ever called him.

"He received very little mail, and most of that was from a man who had served a term in the workhouse while he was there. The only caller he had was a bright-faced fourteen-year-old lad.
137 Barrington told me the boy's name, but I cannot now think what it is.

"The boy frequently took dinner with Barrington.

"Most of the time that Barrington was in his room he spent in writing. He claimed to be writing articles for magazines and newspapers, for which he claimed to be getting lots of money. I did not believe his statement.

"Barrington had a peculiar knack of running to the head of the stairs whenever the doorbell rang. He wanted to see everybody that called. Otherwise he kept pretty much to his room, except, as I said before, when he left Gillespie's place, which was May 30th, and until he left my house to go to McCann's he spent nearly all of his time about the house. He was inquisitive, too, and I did not like that at all, so I was glad when he moved.

"McCann never called at my house to see Barrington, nor did he ever write. I did not know where McCann lived until Barrington showed me the cars. I never saw any of Barrington's papers; in fact, I never saw anything which belonged to him except a little silver-handled knife which he left behind when he moved.

"Frequently while seated at the dinner table Barrington gave way to violent fits of sobbing, but whenever anyone asked him what was the trouble the only information he would give was that he considered himself a much-abused man.

"I felt sorry for the man until he got to hanging around the house all day, and then my sympathy gave way to detest. There is nothing on earth that I hate worse than to have a man hanging about the house.

"Had I known what kind of a man Barrington was I would never

have consented to his becoming a rommer in my house. I am sorry now that I ever saw the man.

"The only thing Barrington told me about his going to McCann's to live was that he had been invited to go there by
138 Mr. McCann.

WAS ALONE WITH M'CANN AT THE MURDER SPOT.

Barrington acknowledged to the sheriff of St. Louis County that he was at Bonfils with the murdered man, and that M'Cann had threatened him.

Sheriff E. C. Hencken, of St. Louis County, signalized the beginning of his work on the case to-day by developing two very important points. In the first place, he secured from Barrington the statement that he and McCann were alone at Bonfils on the night of June 18th, when they had trouble, and that previous to that time McCann had threatened him several times because he interfered between him (McCann) and Mrs. McCann when they had quarrels. In the second place, Sheriff Hencken found out that Barrington spoke German fluently and with an accent which makes both the sheriff and others who heard him talk believe that he is a native of Germany.

Sheriff Hencken said Barrington's German accent was one that could not be acquired and he was confident the man was born in Germany.

NO CHANCE TO BREAK JAIL.

The examination of Barrington Monday morning took place on the aerial passageway from the court-house to the jail at Clayton, within three feet of the gallows, which has been the scene of several hangings in St. Louis County.

Barrington was turned over to Sheriff Hencken by the St. Louis police Saturday night after the visit to the stone quarry where McCann's body was found.

He was taken at once to Clayton and locked in a cell in the county jail, which adjoins the court-house. The jail is well built and modern, and no anxiety is felt regarding the possibility of Barrington escaping.

Many murderers and desperate men have been confined there in the past and none of them has escaped.

The close guard was placed over the jail Sunday night to
139 prevent any possibility of trouble.

Barrington wore his black Prince Albert coat, silk hat, and his linen was as neat as prison regulations made possible when he was locked up.

In his cell he removed them carefully and hung them out of the way of dust and dirt. Although he lay on his cot most of the night, he did not seem to sleep well, and was very nervous when he awoke in the morning.

Sheriff Hencken and his deputies began preparations at daylight for continuing the investigation of the case. Everything had been turned over to them, including Barrington's trunk, and all the articles taken from him and from his room. This includes McCann's shoes, pocketbook, cane, and watch and chain.

Barrington was taken from his cell immediately after breakfast and led to the passageway to the court house for examination. Deputy Sheriffs Bellairs and Schnecko were with Sheriff Hencken.

Barrington appeared very nervous, but he stood up well under the obvious strain. The officers say he is becoming nervous constantly, and they would not be surprised at a complete break-down and confession at any time.

It was in the talk on the passageway that Barrington said McCann had threatened him. He admitted that they had trouble at Bonfils, and said further that no one else was there.

He said he had frequently prevented McCann from mistreating his wife, the last time being only two or three days before McCann's appearance.

He reiterated his story of the trip to Bonfils and of his return to St. Louis on foot, but did not give any explanation of what happened during the night there when McCann was killed.

The conversation was carried on chiefly in English, although the sheriff had discovered Barrington's knowledge of German.

The sheriff and several other officers at Clayton have spoken German from childhood, and a chance remark made between them was what lead to the discovery that Barrington understood it.

He admitted that he could speak it when questioned and proved what he said by talking freely.

Sheriff Hencken regards it as highly important to find the clothes of McCann and the men and women who Barrington says was with them on the night of June 18.

HUNTING FOR M'CANN'S CLOTHES.

The first effort of the officers will be to find the clothes. The sheriff believes that Barrington, in his haste to dispose of the body, may not have removed everything from the pockets, and that if the clothes are found, papers in the pockets may throw further light on the mystery.

Immediately after the examination of Barrington preparations were made for a thorough search of the country near where McCann's body was found. Hooks were secured for use in dragging the pond in the quarry for the clothes, which, it is believed, may have been weighted and sunk there. This will be done before the fields are searched.

The investigation of Barrington's story about the two men and the women who were with them will include his story about money that he could get from persons in the county.

This story was what induced McCann to go to Bonfils with him according to Mrs. McCann.

141 MRS. M'CANN HEAR OF MATRIMONIAL BUREAU.

Post-Office Inspectors Piatt and Almon identified a photograph of Mrs. J. P. McCann, which was shown them by the Post-Dispatch Monday morning, as the photograph of Mrs. J. C. Leland, who has been conducting a matrimonial bureau in the Temple Building at Broadway and Walnut streets.

The photograph was that which was reproduced in the Sunday Post-Dispatch, showing Mrs. McCann with her husband and Lord Barrington. It was taken at Delmar Garden a month ago.

Mrs. Leland first came under the notice of the post-office inspector four months ago during the raids of matrimonial bureaus and similar concerns. Her office was raided and she was taken into custody and appeared before Chief Inspector Dice.

No positive evidence was secured against her, and was released upon her promise to give up the business.

A month later it was found that her place was still operating in the Temple Building, and the inspectors again visited her and took her before Chief Inspector Dice.

In answer to questions she said that she came from Memphis, Tennessee, and that she was not married. She added that no one was backing her in her business.

She told Inspector Dice that she lived at Jefferson avenue and Mill street, giving the address of the McKiney Bread Company. When Dice told her that was impossible, she said she lived on South Jefferson avenue, adding that she did not want to tell where she lived, not caring to have that known.

The directory gave her address as the Laclede Hotel.

She again promised to close up her bureau, but last Friday she was still operating it, and Inspector Piatt called on her and asked her why she had not done as she had promised.

"Yes," said she, "I did promise to close up, and I am going to July 1."

142 Mrs. McCann was a Mrs. Leland before she met McCann. Whether she ever married the latter is disputed. Her first husband, Leland, ran away from their home in Kentucky with another woman and she followed them to Louisville.

Since she has been in St. Louis with McCann. He has cashed checks for her in downtown saloons which were made out to Mrs. Leland. The name of their hotel at 2901 Franklin av. was the Leland Hotel.

HOW M'CANN FIRST MEET BARRINGTON.

Gave him money and employment as his betting commissioner—Murdered man was liberal to a fault and acknowledged that he was an "easy mark."

The Post Dispatch learned that James P. McCann first met Barrington the week before the World's Fair dedication in Tom House's round table bar at 415 Chestnut street.

The bogus lord was standing near the bar when McCann entered him out to the latter with the remark, "That's Barrington."

McCann looked over him searchingly and then, walking over to him, good naturedly said:

"Old man, you look all right to me; I have been reading about you in the local papers and you are in hard luck and broke. Here is a token of my friendship."

As he made the last remark he pulled a $50 note from a roll and handed it to Barrington. The latter accepted it.

The two were friends from then on. They were seen together daily, and before the week was over McCann told some of his friends that Barrington was living at the Leland, 2901 Franklin avenue, with him.

McCann's business was following the races. He was a heavy better and usually lucky. Barrington from the time of their
143 meeting acted as a sort of messenger, placing McCann's bets where directed and cashing them when McCann won.

BARRINGTON PLACED BETS FOR M'CANN.

Barrington told the Post-Dispatch he was McCann's "bookkeeper."

One of McCann's friends said, "If you want a dignified name for Barrington's job, I guess you had better call him McCann's betting commissioner."

When Barrington was with McCann he usually walked a little behind as if following. He acted as if always ready to do McCann's bidding.

They often drank together, but McCann always paid for the drinks. None has been found who saw Barrington spend money on McCann.

Barrington handled considerable money for McCann, probably $600 or $700 a day. At saloons which they frequented McCann was often seen to hand Barrington a roll of bills and tell him to place that with a certain bookmaker, naming also the horse and the race. Barrington always hurried away to obey the order.

When the race was over Barrington gathered up his benefactor's winnings. Often he had a pocket full of bills, for McCann was lucky and won often at big odds.

McCann and Barrington frequently went driving together, but driving, walking, or sitting about a bar, they were never seen with a third party.

When McCann had other company Barrington was absent. McCann's friends noted that he and Barrington were usually together mornings, but they rarely saw Barrington afternoons.

144 M'CANN LIVED AN EASY LIFE.

They are confident that McCann was Barrington's only support, and they believed he was, furthermore, a good one. Barrington never talked much when with McCann.

Barrington met McCann immediately after he left the saloon at Broadway and Chestnut streets, of which he was manager after leaving the workhouse. He told the Post-Dispatch Saturday night that he did not like to work in that saloon, adding "that he used it only as a means to an end."

When asked what the end was he became silent.

McCann came to St. Louis about four months ago from Cincinnati. He was well known there and in other Kentucky towns. He also had many friends in New Orleans, where he frequently spent much time in following the races. He was a typical "good fellow," big, hearty, and a loud laughter. He was six feet tall and weighed about 265 pounds. He described himself as an "easy mark."

When he first came to St. Louis he made the Planters' Hotel his headquarters. When drinking he laughed so loud that he could be heard all over the hotel, and Manager Weaver forbid the sale of drinks to him. He retained his room at the Planters', but after that frequented the Southern, taking many of his meals there. He lived well and spent his money as if he had an unlimited fortune. He often wanted to teach his friends the secret of his easy life.

"You don't see me work, do you?" he said. "And I live well, don't I, and have plenty of money?"

He was practically a stranger when he came to St. Louis, but he met persons here who he had known at the races in Kentucky, New Orleans, and other places, and through them his acquaintance widened rapidly, including some of the most prominent horse fanciers
145 in St. Louis. He also made other acquaintances through his free use of money around the hotels and bars.

He was a "good fellow" with everybody.

One instance in particular is remembered. A short time after his meeting with Barrington he met six men at the Planter's, who introduced themselves to him as men who had seen him on race tracks elsewhere.

"Why, they shook hands with me and were glad to see me, and told me all about myself," said McCann afterwards.

"I couldn't remember them, but they seemed to be good fellows. I didn't mind buying a few bottles for them."

The result was that he had soon spent $50 for wine for the new friends and they began to get free with him. They pulled at his necktie and slapped him on the back, and, according to an eyewitness

of their movements, "acted as if they were going to take everything he had away from him."

McCann became suspicious of them, although he was not sober. They went with him to Tom House's bar, of which he was a frequenter, and there continued to be extremely good fellows with him.

McCann had a reputation of being unusually honest and outspoken in telling persons to their faces what he thought of them.

He said to these fellows:

"You fellows take me for a good thing, I don't mind being a good fellow and buying a few bottles, but I hate to be worked."

He then walked to the bar and asked the bartender to take his valuables and keep them for him. "Those fellows are trying to work me," he added.

He took off the necktie with which they had been playing. He had a diamond stick pin in it. He also removed his diamond shirt studs and rings and then took a roll of bills containing $200 from his
146 pocket. The bartender received them and locked them up. McCann went back to his friends.

A few minutes later a friend who was in the saloon adivsed him to get away from his companions. "Those fellows will get you, Jim," his friend said, "and you had better shake them. Go to a Turkish bath somewhere."

McCann accepted his suggestion and went away. The six friends, whom nobody about the saloon knew, went to the bar and asked for more wine.

"Gives us a few more bottles," they said, "and take the pay out of the bills McCann gave you."

M'CANN HAD A LOT OF HANGERS-ON.

The bartender refused, and ordered them from the place. They went away.

McCann returned in a little while with a new necktie. He said he did not know who the fellows were, and added that he didn't like their ways and believed they were trying to stick them.

McCann had two other friends who were always in search. One of these was Warren W. Stoner, who was arrested Saturday night at the St. James Hotel on suspicion. Stoner's companion was a small, wiry man with dark complexion, who is known around town as a "crapshooter" who always has a story about a game he known that fifty dollars will break.

McCann is said to have guaranteed the payment of the board for Stoner and his wife at the St. James Hotel, and he frequently gave Stoner money.

McCann told a friend about Stoner and the gambler. He said, "Stoner is always after me for money. I have been good to him because he is in hard luck, and have been keeping him until he could get money from home. The other fellow wants me to break a crap

game, which he says $50 would do. That's an old game and he can't catch me that way."

Almost daily McCann's friends say these two men were on
147 the hunt for him, sometimes going about the places he frequented three or four times a day. They used to go to the vicinity of his home on Franklin avenue, but they usually sent a messenger over to tell McCann they wanted to see him in a near-by drug store. Only once or twice, so far as known, did Stoner go to the house himself. Stoner is from Kentucky, and although a young man, has been known as one of the biggest plungers in the West and South. McCann gave a friend the following account of Stoner's career:

"Stoner's father made a fortune out of race horses in Kentucky. When Stoner was a boy about seventeen or eighteen he ran away with a daughter of a very prominent Kentucky family, and they were married. Stoner's father forgave them, but the girl's parents never did. They went to live with Stoner's father. When Stoner was twenty-one his father gave him $25,000. His habits as a plunger enabled him soon to run through this. His first wife left him and soon after this the death of his father left a big estate in his hands.

"He has spent it all now. He also married again and his second wife came to St. Louis with him and stayed at the St. James Hotel."

M'CANN WAS TRUE TO HIS WIFE.

Stoner told Chief Desmond at the Four Courts Saturday night that he was out of money. The chief told him to return to the Four Courts at 10.30 o'clock Sunday morning.

"Would ten to eleven do as well?" he asked.

"I am in need of money and I think I can get some about 10.30." Chief Desmond ordered him to be there about 10.30.

Mrs. McCann had been married before her marriage to McCann. She was a Mrs. Leland and sometimes used that name after coming to St. Louis. She lived with her first husband in Kentucky until he left her and went to Louisville with another woman. She
148 followed them and overtook them there in a hotel. She then left Leland and soon afterwards met McCann.

McCann's habit of spending money freely also extended to his cards. He had a habit of handing them to everybody he met with the remark that "That's who I am, and there's where I live." It was one of his good-fellow habits.

All his friends in St. Louis had carried one or several of his cards. He had two kind, one with his name in the center and the name of the Leland Hotel in the lower left-hand corner, the other with the name of the hotel in the center, the address 2901 Franklin avenue in the lower left-hand corner, and St. Louis, Missouri, in the lower right-hand corner.

No significance on account of his habit is attached to his handing one of the latter cards to the conductor on the St. Louis, St. Charles and Western car on the trip to Bonfils the night of June 18. He had been drinking and was in a jovial mood. It was a natural thing for him to give away a card.

McCann had decided ideas on the treatment of women. He was not of a jealous disposition and, his friends say, paid very little attention to women. He believed in being true to them, and one of his favorite principles was never to tell them a lie. He was frequently absent from home twenty-four hours at a time. A friend asked him what explanations he gave his wife. "Just tell her the truth," he replied, "That's the way to treat a woman always. Never lie to her. She knows I don't go with other women, and after I've been out all night I tell her where I have been and what I've been doing. Maybe I've been in a bath house or out with friends. It makes no difference. She believes me."

A talk McCann had with a friend in a saloon illustrates his good-natured bearing even towards those who had cheated him out of money.

M'CANN WAS A LUCK BETTER.

149 He entered the saloon with a companion and introduced the latter to the bartender. "This fellow beat me out of $200 in New Orleans," he said, laughing. "You know you did," he added, turning to the man. "You told me you could break a faro game and I let you have $200 to try it. You came back and said you had lost, and you had won. Now ain't that right?"

"Well, we're not here to settle old sores," replied the other man, "or talk about them. Let's have a drink."

"Oh, that's all right," said McCann. "I'm not holding that against you. Give us a bottle of wine. But you did it, didn't you?"

McCann was in his best humor right after a big winning on the races. Then he spent money freely. He was in the habit of going about with from $200 to $400 in his pocket, and he was never afraid to display it.

"I've seen him play $50 and come around at night with a whole handful of money," said a friend. "He was the luckiest better I ever saw."

He also had the reputation of being a game man, who would not die without a fight. His height and strength made him a hard man to handle, and though usually good-natured, he had a temper capable of being roused.

PLOT TO GET INSURANCE MONEY IS EXPLODED.

Mrs. McCann and friends of her husband agreed that he carried no life insurance.

This seems to dispose of the theory that had been advanced that

there was a deep plot in the murder involving the insurance. This theory is that the body found at Bonfils is not that of McCann; that McCann will eventually turn up somewhere, and that the intention was to collect the insurance by passing the body off as McCann's.

150 BARRINGTON AT SCENE OF THE MURDER.—BODY OF THE MURDERED MAN POSITIVELY IDENTIFIED AS THAT OF JAMES P. M'CANN.

At one o'clock Sunday afternoon Barrington was surrendered to Sheriff Hencken, of St. Louis County, by Chief of Police James Kiely.

Barrington was attired in his Prince Albert coat, dark trousers, when he walked out of the Four Courts, accompanied by Sheriff Hencken, Detective Smith, of Desmond's staff, and Special Officer Gratiot Cabanne, of Captain McNamee's mounted district.

Sheriff Hencken announced that the bogus lord would be first taken to Bonfils and given an opportunity to identify the body of McCann.

The party boarded the car at Four Courts and transferred to the suburban line, reaching Wellston at 2 o'clock. A large crowd gathered about the sheriff and the prisoner, who was instantly recognized.

Barrington was perfectly composed. He chatted with his guards and occasionally flecked dust specks from his broadcloth coat. When asked anything concerning the murder he invariably replied in his broad English accent: "Please don't ask me anything about it. I'd rawther not talk to anyone about it before consulting my counsel."

McCann stated that he was "real thirsty, don't you know," and was taken into a cafe, where he drank a pint of beer. He was as natural and composed in his movements as though he was on his way to some social function, and never for a moment abated his dignified demeanor.

MORBID-MINDED CROWD AT HAND.

During the wait of ten minutes for a car on the St. Louis, St. Charles and Western Railway several hundred persons clustered around Barrington, and when the car came in there was a
151 scramble for seats, as it had become noised about that Barrington was being taken to the scene of the murder to be confronted by the body of the man he was accused of slaying.

Sheriff Hencken and Barrington were seated together. Detective Smith and Special Officer Cabanne sat his rear.

Barrington chatted freely with the sheriff during the hour's ride. He resisted efforts to draw any information on the tragedy from him, but stated that he had been in that section of the country recently on a pleasure jaunt. Bonfils was reached at 3 o'clock. It is a wayside station with several nearby farmhouses.

The station is at the bottom of a slope, along which a path winds westward to Taussig avenue—a pretentious title for a county road.

A bridge crosses the tracks of the electric line below at this point, a hundred and fifty yards from the station, which is a mere pavilion.

To the east is a wheat field; to the west a corn field.

"There, in the wheat field, is where we found the shoes," said Cabanne, pointing to a spot several hundred yards east of the station. "They were about 50 feet apart when found."

Barrington glanced in the direction spoken of and quietly remarked, "Is that so?"

Up the hill the party trudged, followed by 50 other persons who had alighted from the car.

Toward the south the procession moved, Barrington and his guards in the lead, passed the residence of Mrs. Margaret Lannon on the right, next the home of Fred Krueger on the left, and down a winding hill to a huge tree, an eighth of a mile from the station.

"Here is where I was assaulted," said Barrington, pointing to a large root projecting from the ground. He was pressed for details, but declined to make any further statement.

He admitted, however, that he had been there once before the night of June 18th, and said he had met a little boy who had warned
152 him that it would be dangerous to proceed any further on account of high water.

BARRINGTON WATCHED THE GRAVE DIGGERS.

When Barrington and his escorts arrived at the grave 50 residents of the vicinity were in waiting with Dr. O. W. Koch, the coroner, and Dr. H. Randle, of Clayton, who was to assist him in the autopsy; Deputy Sheriffs J. W. Bellairs, John P. Ossenfort, and H. W. Schnecho.

Every eye was turned to Barrington with renewed interest, but he was stoically indifferent to any emotion. While Undertaker Shehan was exhuming the corpse Barrington and his guards stood twenty feet to the south, in full sight of the proceedings. He conversed on various phases of the affair, but when asked anything definite as to his participation or whether he could divulge anything to solve the mystery, would reply: "Please don't ask me."

As the body was raised from the temporary grave Barrington watched the operation as though he was an ordinary witness and not the central figure of a tragedy for which his life might pay the penalty.

His self control was superb.

"I want to see it," he said to the sheriff. "If it is James McCann, I will surely know it."

The man's wonderful nerve never deserted him. He stood within a foot of the inanimate object and looked at it long and intently.

Not a muscle quivered. His hands hung limply at his side; occasionally they were crossed behind his back.

He looked without wavering for several minutes.

"I do not know whether it is Mr. McCann or not," he finally said.

Mrs. McCann had preceded the sheriff and his prisoner to
153 Bonfils, on an earlier car. She was taken to a farm house to await the summons, when her presence was needed.

She was accompanied by her sister, Mrs. Maymie Evans, of Windsor, Kentucky, and Messrs. Church and Wood. They encouraged her not to succumb during the trying ordeal which confronted her.

"Bring Mrs. McCann," said the sheriff. In a few moments she appeared in the bend of the road which Barrington had traversed a short time before. She was dressed in black and was partially supported by Church and Wood.

WIFE IDENTIFIES HUSBAND'S BODY.

"There lies the sweetest man that ever lived," she said; then, overcome by the horror of the situation, she fell forward on the arms of her escorts, who led her away a few paces.

"Are you sure it is your husband?" asked Detective Smith of the fainting woman. "You are sure there is no mistake?"

With a supreme effort, Mrs. McCann replied: "It is Jim. I loved him too dearly not to know him anywhere. His shoulders and form I recognize, and the teeth as well. It is Jim. Oh, what a fate!"

Then, overcome with grief, she was conducted away.

MURDERER USED PISTOL AND RAZOR.

At this juncture one of the deputy sheriffs came up and announced that the coroner had found two bullets in the head of the dead man. One had entered the jaw just below the cheek bone; the other had pierced the other cheek higher up.

They also found that the clothes had been slashed by a knife or razor. This tallied with the facts gathered—that on that faithful Thursday night two shots had been he'rd—and showed what part a razor had played in the tragedy, the handle of which had been found, in addition to some loaded and empty .38-calibre catra'ges.

154 Under this cumulative array of evidence Barrington still maintained that he had not killed McCann.

"Let me see the body again," he said finally. He was conducted to where the autopsy was in progress. After another intent inspection, he stated he believed that it was the body of his benefactor McCann.

It was nearly 6 o'clock when the "sweating" operation was suspended and the prisoner was taken to the station by Sheriff Hencken and his deputies.

"Barrington has admitted being here on the night McCann was killed," said Chief Desmond. "He admits everything practically, except that he killed him."

Barrington was taken to the county jail at Clayton, after a warrant charging murder had been served upon him.

(The pictures included in the above offer are the following:)

155 (Pictures not furnished.)

156 Mr. GROVER. I will next offer the St. Louis Post-Dispatch of June 30th, 1903, page 2, entitled "Comparison recalls Maxwell's trial."

(This offer is marked "Exhibit C," and is in words and figures as follows:)

"COMPARISON RECALLS MAXWELL'S CRIME."

Barrington and Maxwell, Englishmen, ingratiate themselves in good favor of St. Louis men, murder them, and *thy* to explain absence. Maxwell was hanged.

The Barrington-McCann murder case furnishes a remarkably close parallel to that of Maxwell and Preller in 1885, which was the most celebrated murder in the history of St. Louis. The points of most impressive similarity may be summed up as follows:

I.

Both murderers were Englishmen, traveling in America; Maxwell, whose real name was Hugh Maxwell Brooks, was the son of the head master of a private school at Hyde, England, and from his boyhood had been known as a ne'er do well. His father had sent him to a medical college, and he had managed to acquire the degree of M. D.

Barrington is the son of a coachman in England. His real name is George Frederick Nevill Barton. In his several aliases he always used his given name of Frederick. He is about ten years older than was Maxwell, and has a long criminal career.

II.

Both men murdered their best friend. Maxwell killed Charles F. Preller, a traveling salesman for tapestries, whom he met in Chicago and followed to St. Louis. He assiduously cultivated Preller's acquaintance, after learning that his victim had some money.

Barrington became acquainted with James P. McCann, a sympathetic sporting man, and went to live with him. Maxwell and Preller roomed together at the Southern Hotel. Barrington and McCann frequented the saloons together; so also did Maxwell and Preller.

157 III.

Maxwell used his medical diploma to induce Preller to permit him to administer chloroform under pretense of performing a surgical operation rendered advisable by reason of Preller's ailments.

*B*arried his assumption of service in the British army and a consequent pension to induce McCann to go with him to Bonfils, where he pretended to have found friends who would make him a loan on his pension papers. Preller was chloroformed to death. McCann was shot to death.

IV.

Both criminals created factitious stories to account for the disappearance of their victims. Maxwell stuffed Preller's body into a trunk in their room at the Southern, first removing the clothing.

McCann's body, likewise stripped naked, was thrown into a quarry pond.

Maxwell told that Preller had gone away on business. Barrington told that McCann had a difficulty with some men and women and had gone away.

V.

Both criminals showed brazen nonchalance. Maxwell continued to sleep in the room where Preller's body was hidden. Barrington returned to McCann's home and lived there, his victim's widow being in the same house.

VI.

Barrington tried to escape from St. Louis when it became evident that the murder would be found out.

Maxwell could not dispose of Preller's body. He took the dead man's property and clothes and went to San Francisco, and then sailed for Auckland, New Zealand.

When the body of McCann was discovered, Barrington packed his trunk, containing some of the clothing of the murdered
158 man, and sent it to Union Station preparatory to departure.

Maxwell wore some of Preller's clothes in St. Louis after he killed his victim; Barrington wore McCann's hat a part of the time on his nocturnal walk back to St. Louis from Bonfils, and carried McCann's watch and ring until he was arrested.

VII.

Both men were bunglers in crime; apparently they lived only for the day, lacking the intelligence and cunning sufficient to provide against detection. Maxwell's course to San Francisco was revealed by his free and easy manner aboard the train. He told other passengers his name and something as to his antecedents. A detective met a steamer in a launch at Auckland and arrested the fugitive. Barrington was arrested just before he was ready to go to Union Station.

VIII.

Both Maxwell and Barrington were braggarts.

Maxwell boasted of his diploma, his connections, his imaginary achievements.

Barrington boasts of his pretended service as an army officer or his fictitious connection with the nobility, of his imaginary wealth and castle in England.

IX.

In each case the victim greatly befriended the murderer. Preller spent his money on Maxwell and gave the man a good time. McCann did the same for Barrington.

X.

Both Maxwell and Barrington told all sorts of stories in their effort to account for the disappearance of their victims. Both uttered various lies, which were easily punctured by the authorities. Both contradicted themselves, but preserved a brazen front through it all.

159 Both were defended by Attorney John I. Martin. The lawyer met Maxwell's train a hundred miles west of St. Louis, when the criminal was brought back by the detectives, presented his card, and was engeged to defend the murderer, and made a hard fight for his client's life.

Martin conducted the defence of Barrington, when the latter was in the St. Louis workhouse a few months ago, succeeded in inducing Mayor Wells to liberate the prisoner, and now he has offered his services in the defence of Barrington on a murder charge.

XII.

Maxwell was hanged.

Barrington———.

Mr. GROVER. I will next offer the St. Louis Post-Dispatch of Wednesday evening, July 1, 1903, on the 1 page.

(This offer is marked "Exhibit D," and is in words and figures as follows:)

WITNESS SAYS BARRINGTON KNEW BONFILS.

Man living near the murder spot swears he saw the prisoner walking near the quarry, swinging his cane and looking about—Beer bottle clue in Cabanne puzzles police—Mrs. Jacob Miller, whose address Barrington got while he was in jail, admits he offered her a job as housekeeper, but she refused.

Herman Lang, a farmer who lives 300 yards south of the quarry at Bonfils station, where McCann's body was found, told Deputy

Sheriff Bellairs, of St. Louis County, to-day that he will swear that Barrington is the man who passed his house near noon on June 13, five days previous to the murder.

Lang was working on a raft that day, one he was to use in the flood backwater about his house, and about noon Barrington came by where he was working.

He was well dressed, alone, and went along the road looking about and swinging his cane. Lang was on the opinion that he was a man of leisure, looking about to see the flood damage.

Lang is satisfied that Barrington had every opportunity to study the neighborhood.

THE BEER-BOTTLE CLEW.

One of the puzzling points in the case is the identity of Barrington's friend in Cabanne, for whom he purchased bottle beer on several occasions.

Barrington has been identified by a saloon keeper in the neighborhood of Hodiamont avenue and the Suburban railway tracks as a man who several times purchased bottles of beer from him, promising to return the bottles, but never keeping his promise.

The police believe that if they can find the friend or friends of Barrington for whom the beer was purchased they will have an important link in the evidence of his movements during the three weeks that he made his home with the McCanns.

REPORTERS FIND CABANNE FRIEND.

Post-Dispatch reporters learned that Barrington visited the home of Mr. Jacob Miller, at 927 West Cabanne court, which is a block and a half from the saloon in question. It was also learned that Barrington, while stopping at 622 North Garrison avenue, sent several notes by messenger to some point in the Cabanne district. Mrs. Miller stated Tuesday afternoon that on one occasion she received a note from Barrington.

Mrs. Miller denies emphatically that Barrington ever brought beer into her house.

"He called to see me in regard to getting me to keep house for him," said Mrs. Miller. "He told me that he was tired of boarding and had concluded to settle down in a home of his own. He called on me twice, and on both occasions our conversation was limited to a discussion of my becoming his housekeeper.

WOULD NOT KEEP HOUSE FOR HIM.

"I entertained the proposition for several days, and finally concluded that I did not want to keep house for him, and told him so. He never called after that.

"The note which he sent me was to notify me that he would call one evening and talk over the housekeeping proposition. He called,

seemed to be in a great hurry, and left as soon as I gave him my decided answer that I did not want to keep house for him.

"I think it was in the latter part of the May that Barrington made his calls at my house.

"He never brought any beer to my house. I would not have allowed him to do so. Our relations were not of a social nature at all. He called on business, and we talked business, and nothing else. Barrington never inquired into my private affairs; in fact, he never spoke to me of anything but housekeeping.

THE DAUGHTER NOT BARRED.

"When first he made the proposition, I was seriously considering breaking up housekeeping and accepting the position. I asked him if he would allow my daughter to make her home with us, and he said it did not make the least bit of difference to him.

"He added that he would not want me to undertake the venture unless I could feel entirely at home while under his roof.

"He never asked me how much money I had, nor did he tell me how much he had."

Barrington got Mrs. Miller's name and address while he was at police headquarters, following his arrest for being kicked out of doors by Miss Cochrane's brother.

162 At the time Mrs. Miller went to headquarters and reported the disappearance of her husband she also reported the disappearance of $600. The husband has not returned. Recently Mrs. Miller reported that she found the $600 in her trunk.

This discovery was made, however, she says, after Barrington ceased his visits to her house.

DETECTIVES NOW THINK SOME TRAMP HAS CLOTHES.

Detectives who have failed to find McCann's missing clothes now advance the theory that they were taken by some tramp, who donned them and is now far from the scene.

This solution is favored, because a shirt and a pair of trousers, evidently the property of a tramp, have been found a few hundred from the Bonfils station.

They were found by a farm hand named Grunewald, who turned them over to Fred Krueger, who lives near the quarry where McCann was killed.

The pond has been dragged with grappling hooks, and the country from Bonfils to Patentville has been searched by fifty men, without results.

The clothing found consists of a pair of corduroy trousers large enough for a man of 180 pounds, and a delapidated white shirt.

Emil Krueger, one of the boys who found McCann's shoes in the wheat field, found near the same place Tuesday a silk sock, gray, with gold stripes. It was given to Constable Lentz, of Clayton, who

was in the neighborhood, serving supœnas for the inquest to be held Thursday.

Deputy Sheriff Bellairs was present when two men in a skiff grappled in the quarry pit for the clothes Tuesday afternoon.

He stated afterwards that he was convinced that McCann's
163 apparel might still be there, and said that he would have the pond drained by means of a pump owned by a farmer who lives near the place.

Fred Krueger says the pit will dry out without any pumping within the next two weeks unless there are some heavy rains.

BARRINGTON'S SPENDING MONEY IS CUT OFF.

A shave and a victory at a game of cards with a fellow-prisoner in the Clayton jail made Barrington feel especially good Wednesday.

He looked his cheerfulness and told Sheriff Hencken that he had never felt better.

A moment later he displayed more feeling and temper than at any time since he was arrested.

The cause of his change of feeling was a notice that Mrs. McCann had claimed the $20 that Barrington had on deposit with Sheriff Hencken as her money.

Sheriff Hencken told Barrington that he would have to hold the money until the ownership was decided, and Barrington lost his cheerfulness.

"It is a rank injustice," he said, "I gave Mrs. McCann $100, and she is in my death, not me in her's. She is trying to deprive me of my right and my means of defense. I will not stand for anything of that kind."

After Barrington's good humor returned, for his anger lasted but a moment, he began inquiring as to the prospect of a second inquest. Barrington is kept in the dark as to the developments in his case and he does not know that Coroner Kock will hold the second inquest Thursday. He says he wants to be present, as he is not satisfied with the identification of the body.

164 Mr. GROVER. I will next offer the St. Louis Post-Dispatch of Thursday evening, July 2nd, 1903, page 1, "Evidence of a plot. Theory of the prosecution and summary of the evidence."

(This offer is marked "Exhibit E," and is in words and figures as follows:)

"EVIDENCE OF A PLOT."

Edward Spriggs, who was Barrington's barber for a month, testifies that Barrington asked him where he could find a secluded spot near running water. He also inquired about routes to Canada, saying he was going there some time soon.

Miss Margaret Lannon, of Bonfile, testified that she saw Barrington inspecting the country a week previous to the committal of the crime.

Herman Lang, who lives south of the quarry, testifies that he saw Barrington walking about the quarry and along the road past it to the St. Charles rock road June 13.

Barrington's admission will be introduced to show that he was at Bonfils once before the night of the 18th, drawn there to see the effects of the high water.

A little boy will also testify that he met Barrington and told him that he could not walk further along the railroad track towards St. Charles.

The factitious note written by Barrington to himself to allay Mrs. McCann's suspicions as to her husband's whereabouts, with Barrington's confession that he wrote it himself, will be introduced.

The .38-calibre revolver found in Barrington's trunk at Union Station will also be produced. This is the calibre of cartridges found at the scene of the murder.

Mrs. Williams testifies that McCann told her on the car that they were going out into the county on business and not on a lark.

165 Mrs. McCann testifies that Barrington had invited her husband to go into the country that evening—the night of the murder—to see some supposed friends of Barrington, who have never come forward, and that at the last moment told her Barrington had changed the invitation to exclude her.

THEORY OF THE PROSECUTION AND SUMMARY OF THE EVIDENCE.

The theory of the prosecution is that Barrington plotted to lure McCann to a secluded spot where he could murder him and hide the body, disposing of all means of identification; that he did murder McCann and that the motive was robbery; that he took what money and valuables McCann had on his person and that he hoped to fleece Mrs. McCann of the five thousand or more which he knew Mr. McCann had deposited in a St. Louis bank, making it accessible to her.

THE MURDER AND IDENTIFICATION.

On the fact of the murder the prosecutor relies upon the evidence of Dr. Period, of Clayton, who performed the autopsy on the body found in the Bonfils quarry, that there were two bullets wounds and several razor slashes, and these wounds were not self-inflicted.

Mrs. McCann; her sister, Mrs. Maymie Evans; J. W. Church, and Thomas Leonard; Joseph McCann, a brother, of Oklahoma, and Mr. Hume, his brother-in-law, of Kentucky, identified the body.

Mrs. McCann declares it was her husband's body because of the general contour, particularly of the neck and shoulders.

Mrs. Evans identifies the body by a gold-filled tooth.

Church and Leonard also recognize the tooth, and the latter testifies to two upper front teeth far apart, one of which projected. Hume made the identification more complete by a mole on the breast.

Emil and Julius Krueger testify that they found McCann's shoes in the wheat field near the station, as well as one of his silk socks.

166 Officer Ball testifies that he found a bloody cuff near the same place, which Mrs. McCann identified as her husband's.

Martha Lange, 11 years old, testifies that she found McCann's pocketbook, containing a card containing the name Joseph Spiro, Minerva avenue, near where the body was discovered. A few feet away she and her three little brothers found the handle of a razor, five 38-calibre catridges—four loaded and one empty.

Mrs. Charlotte Krueger, her son Julius, who live near the scene of the tragedy, and Thomas Coleman, a watchman on the Wabash Railway at Bonfils, will swear that they heard two pistol shots. Coleman will say that he heard imploring screams from the victim; "For God's sake do not kill me." Mrs. Krueger will testify that she heard a similar remark.

EVIDENCE OF BARRINGTON'S GUILT.

As evidence against Barrington, his admission that he went with McCann to Bonfils, is the strongest proof that he was at the scene of the crime when it was committed.

Should Barrington repudiate the admission made to the detectives, conductor Ike Bennett, and motorman John Oellian, the crew of the car on the St. Louis, St. Charles and Western Railway, will testify that McCann and Barrington went to Bonfils on their car, that they saw them alight, that they heard two pistol shots and screams fifteen minutes after the two left the car and walked in a southerly direction towards the quarry.

Mrs. Gertrude Williams, of 2335 Randolph street, testifies that she talked with McCann on the car with reference to his conversion while she was on her way to the Marvin camp grounds, and she will produce a card with his name and address given her by McCann. She identifies Barrington as the man with McCann.

Motorman Cunningham and Mott, of the St. Louis, St.

167 Charles and Western Railway, testify that on the morning of the 19th they saw Barrington, dirty, bloody, and disheveled, skulking along the track on his way to St. Louis.

They declared that they passed Barrington five times between Pattonville and Wellston, between 5.47 and 7.30, the morning following the murder.

Detective Cabanne and Patrolman Alyward testify to the finding of McCann's gold watch and diamond ring beneath the cushion of the patrol wagon in which Barrington was taken from the mounted district station to the Four Courts.

Charles Meyers testifies that Mott sent him for a policeman at Wellston to arrest Barrington, because of his suspicious appearance, but none could be found at the time. Meyers also testifies that he saw Barrington board a downtown suburban car at Welston about 6 o'clock.

Mr. GROVER. I will next offer the St. Louis Post Dispatch of July 5th, 1903, page 1, without picture.

(This offer is marked "Exhibit F," and is in words and figures as follows:)

BARRINGTON AND THE STRANGE M'CANN MURDER ANALYZED BY DETECTIVE CHIEF DESMOND AND DR. HUGHES, NEUROLOGIST.

Authorities believe bogus lord is guilty, but they can only reconcile contradictory facts in the crime, and the man's bearing by concluding that he is the most remarkable criminal who ever came under their observation.

F. Seymour Barrington will be given a preliminary hearing Wednesday morning, before Justice Campbell, of St. Louis County, on the charge of murdering James P. McCann, his benefactor, at Bonfils Station on the night of June 18th.

The evidence brought out at the inquest will be gone over
168 again at the preliminary. Barrington's attorney will be permitted to cross-examine the witnesses.

Barrington's own statements and the circumstantial evidence that has been produced against him, convince both the St. Louis police and the St. Louis County authorities that he is guilty of the murder of McCann and that his motive was robbery.

At the same time there are a number of facts in connection with the crime which the authorities are unable to explain, except on the theory that Barrington is the most remarkable criminal that ever came under their observation.

They are forced to believe that he is both a daring criminal and a bungler in crime, a coward, yet with nerve to face unflinchingly any change.

The evidence convinces them that he conceived an intricate plot to lure McCann into the country, kill him, take what money and valuables he had, throw his body into the quarry pond, if possible effacing all traces of the crime and of McCann's whereabouts, and then by a system of lying and trickery get from Mrs. McCann the money her husband had left in bank at her disposal.

The cleverness of the plot did not extend, however, to the execution. In the actual work Barrington was clumsy, in the opinion of the police. His fondness for dead men things led him to wear McCann's hat and carry other belongings of his benefactor, which strengthens the case against him. He furthermore bungled in attempting to conceal the body and hide his own movements. When

questioned after his arrest he denied everything and then admitted everything except the murder.

His bold front and calm assertion in the case of evidence that he is not guilty, and that a big surprise will be sprung, further mystify the police and the criminologists who are studying him.

Dr. Charles H. Hughes, the distinguished St. Louis alienist, has written for the Post-Dispatch, an analysis of Barrington's
169 character from a scientific standpoint, and Chief of Detectives Desmond, after sifting all the evidence in the case, has prepared a statement of his theory of the crime.

BARRINGTON IS MORBID EGOTIST OF TYPE FAMILIAR TO PSYCHOLOGISTS.

Doctor Charles H. Hughes, the St. Louis neurologist, classifies Barrington, the Clayton prisoner, as a morbid egotist, and declares he is dangerous to the community. Doctor Hughes has followed Barrington's career in St. Louis closely, and though he has never talked to the pseudo nobleman he says Barrington is of a type that is familiar to psychologists. By Dr. Charles H. Hughes.

"Barrington is a morbid egotist who belongs to the criminal class.

"He is the kind of man who prefers to display his limited talents in evil rather than good lines.

"He is like an engraver who takes to counterfeiting with all its dangerous possibilities and manufactures green goods instead of entering the Government's service and using his talents honestly.

"His egotism is shown in his evident desire for notoriety. His want of moral sense, which is quite apparent, coupled with his egotism, in my opinion, explain his character.

"NO PHYSICAL MARKS OF DEGENERACY.

"His photographs do not show any of the physical marks of the degenerate in his make-up. Often when a man's brain is of abnormal construction, larger on one side than the other, for instance, he has physical marks along parallel lines. Sometimes one ear, too, is smaller than the other. Barrington's photos make him look like rather a small man. I would judge him to be a man whose egotism and lack of moral sense make him think he is smarter than other men are.

170 "He appears to have little or no conscience, and this, coupled with his great self-esteem, lead him into the law's clutches.

"He acts as though he felt himself smart enough to sneak out of the law's clutches, no matter how seriously he became entangled in them.

"With the halter about his neck such a man would expect the to slip the noose and escape the consequences of any criminal adventure.

"So far he has been pretty successful in maintaining a bold front. He seems determined to keep up the bold front to the end.

"I know nothing personally about his adventure, but would say that the man combining in his make-up such moral egotism and lack of moral sense is a dangerous member of society."

BARRINGTON'S EFFEMINACY FURNISHES SMALL ARGUMENT AGAINST HIS GUILT, BY CHIEF OF DETECTIVES DESMOND.

In summing up the various points of the McCann murder case Chief of Detectives Desmond makes the following analysis for the Post-Dispatch:

"It has been said and many believe that Barrington is too effeminate, too cowardly, and too much of a cur to have committed such a crime as that with which he is charged.

"That is a good argument in its way, but let me tell you, no man, no matter what his motive may be, would ever think of committing such a crime as killing his benefactor unless he was a moral degenerate, a cur, and a coward, and such I believe Barrington to be.

"In the first place, we have Barrington's own admission that he accompanied McCann to Bonfils the night that McCann was
171 murdered. He admits returning alone and that he tried to make Mrs. McCann believe that her husband was alive and had left the city to avoid arrest for an alleged assault which Barrington said McCann had committed on some woman.

"He admits that he tried to get $300 from Mrs. McCann on the pretext that he was going to take the money to McCann.

"In explaining McCann's disappearance to the police Barrington related the highly improbable story of the terrible battle which he says he and McCann had at the Suburban Garden on the night that McCann disappeared.

"Now, mark you, Barrington says that the battle took place at the Suburban Garden, and yet we have the sworn statement of Mrs. Gertrude Williams that she saw Barrington and McCann board the St. Louis, St. Charles and Western car at Wellston, only a few blocks from the Suburban Garden, and after the hour at which Barrington says the battle occurred, and that at that time neither Barrington or McCann showed the slightest trace of having been in a struggle.

M'CANN APPEARED PERFECTLY SOBER.

"Mrs. Williams says she talked to McCann while on the way in the car to Bonfils, and that McCann, whom she declares was perfectly sober at the time, told her that he and his friend Barrington were going to Bonfils on business. McCann appeared to be in a jolly good humor, Mrs. Williams says, while Barrington was nervous and acting in a strange manner.

"Having traced Barrington and McCann to Bonfils on the fatal night, the question naturally follows: What did they do from the time they left the car until the shots which were distinctly heard by

Motorman Oellien, of the car on which they went to Bonfils, were fired? Did they quarrel, and did Barrington shoot McCann in self-defense; or was McCann deliberately assassinated by his companion
without being given the slightest warning of his peril, or
172 before he had a chance to defend himself?

"Since Barrington denies having murdered McCann, the solution of this problem depends entirely on conjecture based upon the statements of the motorman who heard the shots.

"Oellien says the shots were fired about ten minutes after McCann and Barrington had alighted from the car at Bonfils and that the sound of the shots came from the direction of the quarry pond, which is more than five minutes' walk from the street railway station. Now, according to that, if the men had quarreled and if McCann had attacked Barrington it must have occurred while the two men were walking toward the quarry, and it is highly improbable that two men strolling along in the dead of the night and in a lonely place would continue their journey if they become involved in a quarrel, with a murderous climax.

BARRINGTON WAS NOT ATTACKED.

"Then, again, Barrington had no mark upon his body to show that he had been attacked. It is true that the thumb nail on his right hand was slightly bruised, but that could have been caused by his handling the revolver. I do not think he could have sustained such an injury in any other manner under the circumstances.

"Now, there seems to be some doubt as to Barrington's ability to inveigle McCann into accompanying him to such a lonely place at such a late hour of night. Mrs. Williams says McCann appeared to be sober and that he had his wits about him.

"That may be true; but a man of McCann's habits could easily have a good-sized 'jag' aboard without showing the slightest sign of it. McCann was a drinking man, and Barrington admits that they had many drinks at Suburban Garden that night.

"Barrington had frequently spoken to McCann about some
173 friends of his out near Bonfils from whom he could obtain a loan of a thousand dollars. This may have induced McCann to go to Bonfils, or the fact that McCann was feeling too much the effect of liquor may have induced him to go out there with Barrington just to get some air with which to drive the effects of the liquor out of his system.

"At any rate the two men went out there, and that fact has been well established. They went there and for what purpose? Barrington had been there before, but McCann had never visited the neighborhood and was an entire stranger to the surroundings. Barrington had said that he had friends out there who would be willing to lend him money, which was a lie. He had no friends out there.

"He was seen taking McCann to that lonely place. Two shots

were heard, as well as an outcry. Barrington was seen walking away from the scene with McCann's hat on. When arrested it was found that he had other property belonging to McCann, and which McCann had in his possession the night he accompanied Barrington to Bonfils.

"Barrington's clothes were covered with blood when he returned from Bonfils, and in his trunk was found a revolver, the caliber of which was identical with the size of the bullets which caused McCann's death.

"Could circumstantial evidence point stronger to a man as the slayer of another than it does to Barrington as the murderer of McCann?

"Barrington was effeminate, cur-like, and cowardly, but who else could plan such a brutal murder than a cur or a coward. If Barrington had any nerve he could have killed McCann in the Leland or at Suburban Garden. It was not necessary for him to lure McCann away out to that lonely *slot* at Bonfils and shoot him down like a dog.

"Besides Bar'ington was much the smaller of the two, and
174 in an even break McCann could have easily whipped Barrington. There was no fight; of that I am positive.

ROBBERY WAS MOTIVE OF CRIME.

"As there is no doubt that robbery was the motive of the crime, the two points on which any possible doubt that Barrington killed McCann may hang are: 'Is Barrington not too cowardly to have committed the crime,' and 'How did Barrington manage to lure McCann to the scene of the murder?' I think my analysis covers both of these points. At least, the theory which I have set out is the only one which, I think, fits the case.

"The fact that Barrington tried to fleece Mrs. McCann out of money after he returned from Bonfils is, in my judgment, corroborative of the supposition that robbery was the only motive.

"It is possible that Barrington originally intended to kill both Mr. and Mrs. McCann. He had invited both of them to accompany him to Bonfils, and according to Mrs. McCann he tried to drug her by putting something into a glass of whiskey which he offered her to drink, and tried to lure her from her home on the pretense of taking her to where her husband could be found."

ONE WIFE TELLS OF BARRINGTON'S CRIMES.

Mrs. Barton, of Brooklyn, openly accuses him of the murder of Lieutenant Robey, of Chathan Barracks, England, 1881.

SEA CLIFF, L. I., *July 4.*—"This latest crime of my husband does not show his usual craft. Otherwise it is wholly in keeping with his

past record. He has always betrayed his best friends, and once before, I believe, killed a benefactor." Mrs. Celestine Miller Barton, first of the American wives of Lord Barrington, thus expressed her estimate of the McCann murder.

Fully convinced from the accounts of the McCann tragedy that Barrington, or Barton, as she calls him, is guilty, she is watching the progress of the case with deep interest, but says that she cares little whether he is punished. Mrs. Barton is a comely woman, a little short of 36 years, with light hair and a slightly florid complexion, She is conducting a small family boarding house in Sea Cliff, on the northern shore of Long Island Sound, 6 miles from Oyster Bay.

"If there is the remotes*y* possibility of such a thing he will talk himself out of his present trouble," she declares. "If he fails now and is imprisoned he will win a pardon later. I have seen too much of the man's ways to believe that he has committed his last crime. I care little what becomes of him, for I have ceased to fear him. I was once afraid that he would return here and try to take our little girl away. I sent her to the home of an aunt in New Jersey, and she is still there. But I am convinced now that the man is without natural emotions, and that he is only looking for money.

"I have been trying to forget him, to get him out of my life. I left my business in Brooklyn to come to Sea Cliff, principally to get away from those who knew of my experience, and now his new troubles have followed me here.

"I believed in my husband, as did almost everyone else who ever came under the spell of his glib tongue. The first year of our marriage was probably as free from crime as any other part of his life, yet I know now that he committed burglary during that time and planned others which an accomplice carried out. My first knowledge of his character came after his arrest in England in 1891 on old charges. Then I learned his record, but he at first convinced me it was a mistake.

"His real name is Frederick Barton, the name under which he married me, except that he inserted the word 'Neville' before the last name.

"As a boy of 7, in Tunbridge Wells, England, he was ar-
176 rested for setting fire to the fire on the town common. At the age of 14 he was in the Red Hill reformatory for theft and vandalism.

"He took a more crafty turn as he grew older and commenced to rob vacant houses. He was three times committed to prison, but always escaped serving the full term of his sentence. His longest time was four years, which he served on a ten-year sentence. Then he turned influential persons into getting him an absolute pardon from Sir Vernon Hercourt, home secretary of the British Government.

"Enlisted as a private in the army, he was assigned as valet to Lieut. Robey. The officer was found dead from a bullet wound,

and Barton was the last person known to have been with him. Suspicion was strong, but his ready tongue freed him from that difficulty.

"He next robbed Vicar Strickland, of Brighton, with whom he ingratiated himself by pious professions. He won the forgiveness of his victim, whom he robbed three times. No one who has not known Barton can realize how effective his religious discourses are on a religiously inclined person. With a person of different inclinations he can talk as fluently on sporting topics, but he seems to have an especial pride in his ability to sham religious feeling.

"After coming to the United States he was coachman for the Allen family, of Bloomfield, N. J.; the Dudley family, of 549 Third street, New York, and for a Mr. Perlman, who lives on Madison avenue, Brooklyn.

WAS COACHMAN FOR RICH FAMILY.

"After he was committed to the St. Louis workhouse last spring, and I had furnished the police positive proof that he and Bar-
177 ton were identical, he sent me a letter written by another person at his dictation, in which he threatened to sue me for libel.

"The Canadian girl, whom he married under the name of Burgoyne, called on me once, but I do not know where she now is. I have nothing but sympathy for her and his Kansas City victim. The Cochranes desired me to testify in her divorce suit, but I could not afford the trip west, and do not believe my testimony is needed.

"A man called on me while Barton was in the workhouse and, representing himself as Chief Desmond, got a full statement from me. I have since learned that Chief Desmond does not resemble this man, who was tall, thin, and smooth shaven. I believe my visitor was an emissary of Barton."

Mr. GROVER. I will next offer the St. Louis Post-Dispatch of July 12th, 1903, page 2 of the magazine part, entitled "What Women Think of Barrington."

(This offer is marked "Exhibit G," and is in words and figures as follows:)

WHAT WOMEN THINK OF BARRINGTON.

Two of his wives and Mrs. McCann tell just what kind of a man the bogus lord is.—His egotistic tales of pretended rank and doughty deeds seem to have won women from the first.—But now Mrs. Barton, of Brooklyn; Mrs. Cochran, of Kansas City, and Mrs. McCann detest him.

One of the most curious studies ever presented to the criminologist is offered by the remarkable creature who, under the name of Barrington, is locked up on the charge of murder here. Many things

differentiate him from the ordinary murderer, but perhaps the most striking are his relations with women, who have played a leading part in his career of rascality.

178 So far as his past has been revealed Barrington has always been a woman's man. Among the female sex he found his easiest victims. He was never a "man's man."

Men laughed at him.

Women pitied him.

When he boasted of aristocratic connections it made no impression on men. Woman, on the other hand, at once became interested. So far as is known, Barrington never victimized any man. McCann, even when drunk, treated him as a servant. Barrington could only overcome men by murder. But with women he found a plausible tongue quite sufficient for his purpose.

From the first moment of Barrington's arrival in St. Louis he has been an object of interest to women. Never before was there a prisoner who excited their curiosity to such a degree, and people have read with amazement during the last few days of visits to him in the jail at Clayton by young girls and matrons of some social position.

What is the secret of Barrington's fascination for the fair sex? Just what do women find in the man to excite their interest? These are questions that have been put during the last few days to three of Barrington's victims, two of whom he had married, the third being Mrs. McCann, whom perhaps he hoped to marry. Below in their own words these three women, who had a close personal knowledge of this remarkable scoundrel, tell just what they think of him and explain in a measure the curious power he exercised with others of their sex.

In all three tales Barrington's fantastic stories of personal bravery and aristocratic blood stand out prominent. His army service, his title and his castle in England—at all of which men only laughed—were always emphasized when women were present. The son of a poor cab driver, Barrington became a gentleman's servant. He thus acquired a knowledge of polite society through the servant's hall. With this and an imaginary castle and title he was able to deceive numerous people, and perhaps even to deceive himself. Listen to what his former wives have to say about the plausible stories he told before he led them to the altar.

179 By Mrs. Wilhelmina Grace Cochran-Barrington, of Kansas City and St. Louis:

"I hate Barrington, and I never want to see him again. Since the murder of McCann one can only imagine what my brother saved me from. My advice to other girls is to heed the wishes of their relatives in regard to suitors for their hands. When my marriage is annulled no plausible stranger will ever gull me again.

"As I have said, I hate this man. I never loved him. I married him because he fascinated me with his fine tales and I was an ambi-

tious girl. After my marriage he treated me like a brother rather than a husband.

"Of course I never suspected him until my brother told me that he was an imposter. At first I could not believe it, but the facts are so plain now, and so awful, that no one can doubt them.

"During the time that he spent as a boarder at my sister's home at 4368 West Belle place, St. Louis, he told me many stories of England and described his pretended family residences so accurately that I think he must have had in mind some old English Castle that really exists.

"I was caught by the glamor of his pretended social status, his rank and wealth, also pretended, but he talked of them in such a plausible manner that I was thoroughly convinced. Ah, what a fascinating tongue he had!

"It is true he was not so prepossessing in some ways as I had been led to expect the gently born. He explained this to me by saying that he had become aged and broken by the exposures incident to a life of hardships as an officer in his Majesty's army, serving in difficult campaigns in South Africa and elsewhere.

"The rogue led me to believe that his broken appearance was due to heroic services for his sovereign, and that his scars were honorable.

He never told me a tale of his pretended campaigning in which
180 he failed to show a complete mastery of detail. Everything seemed to fit in so exactly that it was impossible to suspect him of lying.

"No one can understand the studied and finished artifices of this man without seeing and knowing him under the same circumstances in which I knew him.

"I am quite ambitious and have been so since my early childhood. Two of my father's sisters married lairds in Scotland and I come of a very good family. I was born in Canada and my father in Scotland. Since my infancy I have been familiar with our family history, and have tried to live up to ideas of nobility.

"Legends of a proud ancestry and tales of valor were imbibed by my childish mind, and I constantly hoped to attain distinction that would not be of any vulgar sort.

"I was educated in private schools and studied art and music. No one could be more careful than my father in the choice of associates for his children. When a young man called my father always made the proper inquiries as to his character and standing.

"Barrington and I met the afternoon of my arrival at my sister's home. We were introduced in the parlor. Naturally I was interested in him. His graceful manner, suave speech, and evident culture deeply impressed me. Usually I am not easily impressed, but there was a little trick of gesture, an appeal in his deep blue eyes, and such modesty in the recital of his endless adventures, that I was strongly drawn to him.

"After dinner he related experiences of the camp in India, South

Africa, and Egypt. He seemed to have been everywhere, to have seen everything worth seeing, and to know everyone worth knowing. There was nothing boastful about him. In any circle he would have been of interest.

"The evening passed away deliciously. I had not been so deeply interested in all my life. The others listened to his tales with as much credence as I.

181 "In a few days were well acquainted. He was so deferential and thoughtful with women. He was the gallant in an unobtrusive way, constantly performing those little attentions which are so pleasant to the sex. From the first he manifested a preference for my society.

"Gradually Barrington let drop references to his pretended position in England, his expectations of being one day the Viscount Barrington and Lord of 'Melrose Castle.' His claim of wealth and distinction did not seem extravagant to me then. They would have fooled wiser persons that I. They have deceived very clever persons, for the police say that as 'Burgoyne' he was regarded as one of the most astute confidence men on two continents, and it can easily be seen how he could blandish me.

"The halo of his military record attracted me. He narrated the most thrilling stories of the wars in India and South Africa. With the skill of an actor he described scenes of the Boer war in which he pretended to have participated. He exhibited scars on his scalp which he said were from wounds received in the battle of Spion Kop.

"It would require days for me to recall the stories that he told me, the claims he made to beautiful estates, the experiences he had met in camps and courts and in continental society.

"He was not demonstrative, and that was one of the things that attracted me. So when he asked me to marry him it came naturally expected by me.

"To give him his due, no husband could be more attentive to a bride than he was to me. This convinces me that he did not marry me for love, but in the hope of securing material gain."

Mrs. Celeste Miller Barton, of Brooklyn, N. Y., former wife of Lord Barrington.

"My first meeting with Barton, alias Barrington, was at a ball. I was just 20 years old and had recently come into society. Barton was then about 30 years old. He looked and spoke and acted like a gentleman. I was fascinated by the man.

182 "Not long after he was introduced to me he began weaving the thread of a narrative about his adventures by land and sea, his army record, his noble birth, his ancient lineage, and his vast estates in Kent, England.

"He paid me marked attention and began to call on me. My mother, too, was fascinated by his smooth manner. He was the most plausible talker I ever met. I learned to love him and we were married.

"He suggested that we go to England, and my mother turned my share of the property left me by my father into cash and entrusted it to Barton without a word. In London we lived for a while in a style befitting the station in life in which, as I fondly believed, my husband belonged. He took me to sumptuously furnished apartments and was lavish in his expenditures—of my money.

"When we went to Brighton the scales fell from my eyes. I discovered there, without a moment's warning, that the husband whom I loved and trusted was one of the blackest villains on the face of the earth.

"My awakening came one morning when a sheriff from London arrested my husband on the charge of selling mortgaged property. He had bought our furniture on the installment plan and then sold it. His arrest caused his whole record to come out.

"I learned with a shock that my husband was one of the most notorious criminals in Great Britain. It came out that he had committed a burglary in Sussex, and for this he was convicted and sentenced to twelve years in prison.

"For a time I was heartbroken with the disgrace of it all. To earn money to pay the way of my mother and myself back to America I was compelled to become a servant in London.

"But before I returned home I made a trip to Kent, determined to know the exact truth about Barton and his family connections. His father, instead of being a landed squire, was a cab driver. My
183 husband, I learned, had taken the pains to educate himself, with the primary purpose, I am convinced, of turning his education to account in a career of villainy.

"I turned my back to the past and faced the future with a brave heart, for though my own life was ruined, I had my child to live for, and for her sake I am willing to toil, and am toiling day in and day out. Never has she set eyes upon her father, and she never will. To her, as to me, he is already dead."

By Mrs. Jessie C. McCann, widow of Barrington's murder victim:

"I never saw Barrington until he came into my house. My husband gave him a position as his valet, at Barrington's solicitation. He said he was without a penny and needed assistance.

"He was a very entertaining man, and we believed his stories. Still, the man was repulsive to me, and I told my husband that I didn't like to have Barrington in the house. But my husband was determined to have him, and Barrington remained.

"I protested against Barrington's accompanying us on drives and to garden resorts. I never expected, though, that Barrington would do my husband any harm.

"I believe he tried to poison me after he killed my husband, when he was afraid that I was going to tell the police of his peculiar action. He offered me a whiskey toddy that he made, and I would not drink it, because it had a peculiar odor. I did sip it, and it nearly burned my tongue out. I got sick a few minutes later and had to lie down.

"I am convinced now that Barrington tried to poison me with laudanum. I believe now that the man is a villain, and I know that he murdered my husband in cold blood. I can't say whether he would have killed me or not, after my refusal to give him money, but I know that I feared him. I always detested him, and did not feel any more kindly towards him when he tried to console me in
184 my spells of weeping because of my husband's disappearance. When Barrington says that my husband ever assaulted me, he lies. When Barrington says that he defended me, even once, he lies. I think it is little short of persecution of people even to insinuate that I could have possibly been implicated in the low deed of this despicable creature. I always did despise the man, and I shall use every effort in my power to put him where he belongs. My poor husband! my poor husband! To think that he could be the victim of so foul an assault."

Mr. GROVER. I next offer the Sunday Post-Dispatch of July
185 19, 1903, magazine department, page 2, entitled, "Is Barrington crazy?"

(This offer is marked "Exhibit H," and is in words and figures as follows:)

IS BARRINGTON CRAZY?

What a criminologist finds—Conclusion is reached that no man in his senses would commit crimes and enter matrimonial alliances so blunderingly and causelessly as this Englishman has done.

It has been stated during the past few days that there is likelihood of the defense of insanity being made when "Lord Barrington" is brought to trial for the McCann murder. In the opinion of many criminal lawyers who have studied the case, this offers practically the only hope of saving Barrington from the gallows, the evidence against him, although purely circumstantial, being of the strongest possible character. Though insanity has been frequently set up as a defense in murder cases upon frivulous grounds, there are, in the opinion of lawyers, many reasons to justify it in the present instance. A distinguished criminologist has devoted much though' and study to Barrington, and in the following account he gives with much detail his reasons for believing that the bogus lord is out of his mind.

Having gone carefully over the career of Lord Barrington, and considering it from a scientific as well as from a legal point of view, I am convinced that many of his acts are incapable of being reconciled with normal sanity. In fact, the further back you trace the career of this extraordinary criminal the more convinced are you that he is at least subject to temporary fits of insanity, if he is not altogether unbalanced. Running through the whole career of Barrington there is a continuous thread of erratic and unreason-
186 able conduct. I call him Lord Barrington for convenience, being well aware from the man's manner and speech that he is merely one of the English lower classes; in fact, a typical English servant. He has had so many aliases during his criminal career

that it is most convenient to designate him by the name under which his St. Louis record has been made. Taking this St. Louis record alone, and looking at it in its large aspect, there are many things which show that he was acting under some extraordinary delusion. No sane man would have gone into the Cochran marriage enterprise upon the knowledge in his possession at the time of the wedding. What had Barrington to gain from marrying Miss Cochran? Assuming that he did so purely as an adventure, it is impossible to see how he could have hoped to benefit from such an enterprise. The Cochranes are not rich people, and the most casual investigation by Barrington would have shown him that there was no money to be secured in that quarter. The claim has been made that Barrington married Miss Cochrane under the belief that she was the daughter of the wealthy Kansas City pork packer. As a matter of fact, he well knew that this was not so. He knew that any blackmailing scheme he might put up to the Cochrane family would be of no avail, for the simple reason that none of them were wealthy and there was no money to be gained by such a line of conduct.

Miss Cochrane believed Barrington's fairy tales about his wealth and position, his castle in England, and his record in the army; but she, on the other hand, never pretended to be wealthy or to expect to inherit wealth in the future. If Barrington were an adventurer, entering such a marriage for the purpose of gain, he would have made sure of one thing—that the money was in the family.

An expert criminal, knowing the serious consequences that would result from a marriage, would have done that all criminals
187 first do, and that is assure himself of the booty. There is no crook alive who would have gone into such an enterprise with the knowledge Barrington possessed Miss Cochrane to the altar that she possessed no more property than the clothes she stood up in, and that none of her family was blackmailable, because they had no large sums which could be extorted from them. What had Barrington to gain from marrying Miss Cochrane? I have asked this question of a number of people intimately familiar with the facts, and not one of them has been able to give a satisfactory answer. Discovery and exposure by the members of the Cochrane family were absolutely certain to take place within a short time of the wedding, for the engraved cards announced that the couple would be "At home at Melrose Castle, Brighton, England, April 1st." There is no such place as Melrose Castle, Brighton, and Barrington apparently did not possess money enough to take his wife to England. He knew that the Cochranes had no money, and that the tissue of falsehood about himself was certain to be exposed in a very short time. When the exposure actually came there is nothing to show that Barrington attempted to extort money from the Cochrane family or to benefit in any way from the extraordinary marriage he had made.

Here are many facts which can not be reconciled with the intelligence displayed by the ordinary crook. You can always find a motive except when you are dealing with an insane man. The motive

is altogether lacking in the extraordinary story of the Cochran wedding.

Now, take the McCann case. What had Barrington to gain by murdering McCann? How could he benefit by killing him? Upon the contrary, was it not absolutely certain that Barrington would lose rather than gain by killing his benefactor? McCann had
188 picked Barrington up out of the gutter and put him on his feet and gave him every evidence of an intention to stand by the bogus lord indefinitely.

There was not a single penny of McCann's money deposited in the bank which Barrington could touch after McCann was dead.

If Mrs. McCann's marriage was established she would inherit merely a part of her husband's estate allowed her by the common law if he died intestate, and if she were not married to him she could not touch any of it. The theory has been advanced as explaining Barrington's motive that he hoped to marry Mrs. McCann and so get the money. But this is very far-fetched and fantastic. An expert criminal, in order to secure so small a sum as was envolved in this case—about $20,000—would not commit a murder as the initial act in the scheme. A crook will only commit murder when he can actually place his hands on the money immediately after the crime.

Upon the other hand, there is everything to show that Barrington well knew that the idea of Mrs. McCann marrying him was out of the question. He was well aware that she disliked him and regarded him with suspicion. Moreover, he knew that she was not the kind of a woman who could be easily deceived, and that if she were a wealthy widow in her own right she would have no use for him. In fact, Barrington realized that Mrs. McCann was the only one of the group that was thoroughly "onto" him before the murder. How, then, could Barrington gain or hope to gain by murdering McCann? That he did murder him there is no doubt in my mind, but I have yet to hear any explanation of why he did so that is compatible with sanity.

The very fact that Barrington had told a multitude of lies about this case and that he has tangled himself all up in a mass of falsehoods which can easily be disproved is in itself an indication of an unbalanced mind. The expert crook and adventurer, when
189 he tells a lie sticks to it and it always plausible. He never contradicts himself. He puts up an explanation that the police can only destroy with positive proof.

Barrington, on the other hand, is no sooner arrested for the murder of McCann than he begins telling the silliest kind of falsehoods, which an hour's investigation is sufficient to destroy. Then he comes out with another story equally absurd, apparently not knowing that he is all the while piling up evidence against himself.

The same is true when we follow Barrington's actions from then on to the time of the discovery of the body. He left the evidence lying all around. He told a negro to wash the blood off of his underclothes, and he began a series of explanations of McCann's

absence which were so childish as to excite the suspicions of Mrs. McCann at once. At no time did Barrington display the intelligence of the ordinary crook in covering up his crime. He manifested a low sort of cunning at times, but it was in unrelated spots, and shows the lack of coherent thoughts.

When Barrington learned that the body had been found, what did he do? Instead of disappearing without a moment's loss of time he goes back to the McCann house and packs his trunk and fools around there for several hours, waiting for the officers to come to arrest him. What did he put into the trunk? Property taken off of the dead body of McCann. What did he do when he was preparing to murder? Made every arrangement so that identification of himself would be an easy matter for the police. Dressed in a grotesque fashion, wearing Tom Allen's old silk hat and a frock coat, and swinging a cane—a style of dress so unusual that it would be sure to attract attention anywhere in Missouri—he goes out to Bonfils in broad dalight and walks up and down the road, reconnoitering the quarry in plain view of a large number of people. He did this several times. Not another man in St. Louis was dressed in this style but Barrington, and identification was the simplest matter.

190 What did he do at the time of the murder? It does not appear that he made any reasonable attempt at concealment. He went out with McCann on the street car and permitted the latter to talk with passengers and to give his card to the conductor just as they got off. Barrington never attempted to hide, and it does not appear that he was in any way disguised. Nobody but a lunatic about to commit a murder would take so few precautions. The wonder is that he was not caught in the act, because the shots were heard by several people, including the conductor and motorman of the car they had taken to Bonfils. The crazy man appears the follow morning walking along, wearing his victim's hat, covered with blood, and not even attempting to conceal himself when he saw people approaching on the lonely road. Barrington could see the car coming for a long distance and might easily have stepped aside into the bushes and let it pass. But instead of that he walked along the road at an hour of the morning when any pedestrian would have been sure to have attracted attention and never attempted to hide his face or conceal his identity as the car passed.

The only explanation of Barrington's motive in the McCann murder which has seemed at all reasonable to me is one that strongly points to the man's insanity. This is the theory that Barrington murdered McCann for the clothes he had on him and for the small amount of jewelry he possessed.

One of the extraordinary characteristics Barrington is a passion for wearing dead man's clothes. Lombroso mentions this as an idiosyncrasy sometimes found in a certain type of criminal lunatics. Barrington took the utmost pride in his possession of Tom Allen's silk hat. His career previous to coming to St. Louis showed that he

had a fondness for the clothing of wives he had married and deserted, and which he sold only from necessity.

I have no doubt that Barrington has been wearing dead
191 men's clothes for years, and that they possess a peculiar fascination for him, the sure mark of a disordered mind. The chance to get hold of and wear McCann's hat was irresistable. He clapped it on his head at once when McCann was dead. Barrington appears to have pondered about wearing McCann's shoes and to have at first decided to keep them and then throw them away.

Under certain circumstances a lunatic of this kind would murder a man to get his hat, but I do not think he would do so when he knew at the same time that he was cutting off his means of livelihood. Barrington must have known that he would be on his "uppers" again within a few days of McCann's death, and therefore he ceased not only McCann's clothes, but his jewelry. The theory has been advanced that Barrington intended to kill Mr. and Mrs. McCann at Bonfils at the same time, but that he would have been equally crazy, for he could not have touched any of their money deposited in bank.

I therefore search in vain for any reasonable explanation of Barrington's conduct. His whole career in St. Louis and previously is not that of a criminal and adventurer, but of a lunatic, a pervert, a degenerate. Here is a man who commits the most atrocious crimes without any forethought and without any apparent motive, taking chances that no crook would take without a big temptation.

I ask any man who has studied the case how he can reconcile Barrington's conduct with sanity, or even with a low order of intelligence. It is inconceivable that a man should do what he has done that possessed any kind of sense.

J. R.

Mr. GROVER. I will next offer the St. Louis Post-Dispatch of Sunday, September 6th, 1903, page 2 of magazine. I offer the picture also.

(This offer is in words and figures as follows:)

192 HOW BARRINGTON ESCAPED BY FORGERY.

Daring crime committed in Chatham prison under direction of the celebrated Austin Bidwell—Bogus letters stating that he had been left a bogus fortune were made the foundation of a successful plea for the release of the bogus lord now in the Clayton jail.

It has now been discoverd that "Lord" Barrington, who is in jail at Clayton, awaiting trial for the murder of Jas. P. McCann, escaped from a British prison by means of one of the most daring forgeries in the annals of crime. Moreover, it is found that Barrington was the associate of and co-worker in this offense with Austin

Bidwell, the American who was sentenced to life imprisonment for the famous $5,000,000 forgery on the Bank of England.

Barrington had been sentenced to ten years in prison for forgery when he met Bidwell, who, perhaps, the most celebrated forger of modern times, found much in common with the young Englishman, already expert in his peculiar occupation.

They concocted a daring scheme which was brilliantly successful, and which, by means of forgeries, actually committed in the prison, resulted in the release of Barrington after he had served less than one-third of his sentence.

Just how Barrington managed to escape from Chatham prison in England, where he had been sentenced for forgery, has only now come to light. The facts show that Barrington is an accomplished criminal, daring in his conception, bold and resourceful, smooth and deceptive in his contest with men and fully conversant with the affairs of the world in the higher walks of life. Here is a man, who, in his youth, was steeped in the crime of forgery, and who, by means of forgeries executed in Chatham prison, deceived Sir Wil-
198 liam Harcourt, at that time the British home secretary, into granting him a release. The forgery being the actual point in an elaborate tissue of falsehoods cleverly presented by Barrington and his partner Bidwell.

One would think that a man serving a sentence for forgery would be scrupulous in his conduct in the prison and resolute to abandon his sinful ways for the purpose of shortening his term and reforming his life. But not so with Barrington. He, as these developments now show, within the prison walls, participated in the very crime for which he had been sentenced, and selected as his victim no less a person than a member of the British cabinet and one of the leading figures in the Government. Sir William Vernon Harcourt was an accomplished and experienced man of the world, and as British home secretary, as well as in under executive governmental capacities, he had come in contact with the criminal classes and was accustomed to the frauds and deceptions by which they seeked to hoodwink the highest officials in the prison world. Many clever scoundrels had tried to bamboozle Sir William Harcourt, but failed. But the minute Barrington prepared the snare, Sir William Harcourt fell into the trap.

The prisoner out at Clayton to-day may therefore reckon as his most distinguished victim the late leader of the Liberal Party in England. He may also count it when he comes to write "People I have known," as one of the most interesting chapters in his life, that he was intimate with and even respected by Austin Bidwell, the king of crooks, the foremost forger in history and the man who selected the great Bank of England as his mark and held it up to the ridicule of the financial world.

Bidwell has left it on record that he held Barrington in high esteem. The king of forgers, who regarded Barrington as a most promising youth, who might yet live to shed lustre on their mutual profession. Bidwell endorsement raises Barrington into
194 the aristocracy as criminals just as he desired to be regarded as one of the aristocracy of the outside world.

The burglar, the petty thief, and the murderer must take off his hat to the friend and protégé of the great Austin Bidwell, who crimes were even cleverer and more thrilling than anything described by Garboriau or Sherlock Holmes.

Barrington therefore is no stupid blunderer. We have "in our midst" one of the great men in the world of crimes. A historic figure. A man who, by his actual accomplishment in Chatham prison, no less than by his distinguished associations there, must be forever mentioned in the annals of the knight of the pen.

Barrington could give Jim the Penman cards and spades. He is capable of producing any document which his situation may demand, whether it be a letter informing him that he has fallen heir to a million dollars or a note of sympathy from the King of England, or a free pardon from the President of the United States. He can turn out a sight draft for half a million dollars on J. P. Morgan & Company just as easily as he can produce letters written by the late Mr. McCann. More than this Barrington could get into correspondence with the great ones of the earth and produce genuine letters of the most astonishing character. He is a master of deception. At the preliminary hearing into McCann's death, just as he astonished the court one day by writing short hand and the next day by conversing in four or five different languages, so when the time comes for his trial for the murder he will probably play the hand which he is now holding in reserve and produce documents of the most unexpected and surprising nature. It is needless to say that any document or letter emanating from Barrington ought to be investigated and re-investigated by the St. Louis authorities before it is accepted as
195 genuine. It is well for the sake of the cause of justice that the St. Louis authorities are now put on their guard in this respect and that the discovery as to how Barrington got out of Chatham prison by forgery has been made. Barrington, it may be stated at the outset, did not originally conceive the daring scheme that resulted in his liberation. That was the work of Austin Bidwell, who, at the time, was a much older man. Although Barrington was an expert forger who had been sentenced to ten years imprisonment, he was still but little more than a boy. Nevertheless his appearance and manner made such an impression on Bidwell, the king of forgers, that they immediately became friendly. Bidwell resolved to strike a blow if possible for the release of Barrington.

Bidwell tells the story in full in his book entitled "From Wall Street to Newgate," published by the Bidwell-Publishing Company of Hartford, after Bidwell's release in 1893. Bidwell reformed after his twenty years in prison and spent the rest of his life in this

country, writing and selling the remarkable book which tells the story of how he committed the celebrated forgeries on the Bank of England. Bidwell, who has since died, knew Barrington under the name of Barton. He says:

"Four or five years after I went to Chatham, a young fellow named Frederick Barton arrived with a ten-year's sentence of forgery. His appearance and manner were very much in his favor, and his conduct so confirmed the good first impression that he speedily became a favorite from the governor down. Three years had slipped by when one day he asked me if I would prepare a petition which he might send to the home secretary in the hope of obtaining a commutation of sentence. I liked the youngster very well and readily consented, but told him that I doubted very much if he would get anything. The petition was sent, and in a few days the usual answer was returned 'No grounds.' He told me of his ill-luck
196 and I said to him: 'Look here, so long as you send up whining petitions asking for mercy both you and they will be treated with contempt. If you wish to get that English gentleman in the home office to do anything for you, make him believe you are a millionaire; you will see whether he will do anything for you then or not.' He laughed merrily at that.

"'A millionaire! Why, I haven't a sixpence. My father is only a private coachman at Turnbridge Wells.'

"'That is nothing at all,' I said. 'If you will be guided by me and let me manage things for you I will have a petition send in for you from the outside, and I feel sure we can get you out.' An idea had just flashed into my mind and I was eager to try it.

"At first," says Bidwell, "he was a little timid about the venture, fearing that I might get him into trouble, but when he became convinced that I would do nothing of the kind he consented. I had a warder in the prison, who, in consideration of an occasional tip, used to act as my postman, sending my letters to my friends and bringing in theirs to me. This was a deadly offense against the rules, but as they permitted correspondence was outrageously limited I saw no reason why I should deprive myself of letters when I had a chance to have them, and as I took great care that the great men in London should get no inkling of my misdeeds, I dare say their hearts did not grieve after what their eyes did not see.

"My warder friend supplied me with writing materials. I prepared one letter, which I had him copy, and another in my own handwriting. Both were directed to Barton, and informed him that his rich uncle had lately died and had left him 16,000 pounds in money and sixteen thousand acres of cotton land in India. He was also informed that his father had gone to India to look after
197 the property, and upon his return a petition would be presented to the home secretary, who, it was hoped, would grant the release.

"These two letters my friend sent to a friend of mine in London, with a note from me requesting him to post them immediately. I

told Barton what I had done, at the same time cautioning him to guard the closest secrecy. Two days afterwards the letters arrived, and I directed my protege to spread the news as much as possible, to tell all the warders he saw, and to show them his letters.

"We had at that time in prison a wideawake, but tricky fellow, named George Smith. He had been clerk to an important firm of auctioneers in London and had been sentenced by probably the most savage judge on the bench, Commissioner Ker, to fourteen years' imprisonment for receiving a quantity of stolen silverware, which he had his employers sell for him. He was about to be released, and I determined to make use of him, but without letting him know the truth, for I knew that if he suspected that he was merely doing a good term for the chum he left behind him he, like the home secretary, without the right kind of inducement, would have left his friend to stop where he was until the bottomless pit was frozen over.

"Barton, by my directions, told Smith of his good fortune and that he hoped on his father's return to be liberated. Smith then did exactly what I expected and wanted him to do. He said there was no need to wait until then, that he was going to be released in a few days, and 'if you like I will send in a petition for you. It can't do any harm, and it may get you released immediately.'

"Barton at once accepted the offer and told him that if successful the post of manager on the Indian estate would be at his disposal. He also suggested to me to write the petition. Smith
198 managed to see me in the course of the day, and supposing me to have no knowledge of the matter explained the situation and asked me to write the petition. Needless to say I promised everything asked for and added that I would make it my business to have the petition in London at some place where he could find it the day of his discharge. The petition was prepared, setting forth all the interesting facts, and, after being submitted to Barton and Smith, sent to the latter's address in London."

Bidwell then tells how Smith, before his release, was taken to Millbank prison, the heart of London, the place where David Copperfield visited Uriah Heep. Here Smith was released, and within one hour of his discharge through the gates of Millbank he left the petition personally at the home office. Two days later one of the clerks acknowledge its receipt, saying it was under consideration, and a week later Smith was notified that a release would be granted. "He immediately," says Bidwell, "telegraphed the news to my warder, who told me, and I told Barton. Two days more and the release came down. Barton went on his way rejoicing and everyone was glad of his happy fortune. The only one who felt much disappointed was very likely poor Smith, who never heard of his friend again."

Bidwell had the nerve some months afterwards to write to Sir William Harcourt, ridiculing his management of the home office and citing the case of Barton, telling him exactly how the fraudulent release had been obtained.

After Barrington's escape in this remarkable manner the home office adopted the rule that where convicted forgers were concerned all petitions and proofs of grounds of petition for release must be investigated with the utmost diligence. The rule prevails to-day throughout the world of England and is based upon Barrington's remarkable escape.

199 (This picture referred to in Exhibit I is the following:)

"Accompanying this offer is a certain picture, which picture, however, has not been furnished the clerk by counsel; and hence can not be inserted herein. (Note by clerk.)"

Mr. GROVER. I will now offer the Post-Dispatch of Sunday December 27, 1903—the second page of the want department. It is noted on the outside, "Barrington show to-day," is the title—a little scrap there about an inch and a half in length.

(This offer is marked "Exhibit J" and is in words and figures as follows:)

"THE BARRINGTON SHOW TO-DAY.

"The Barrington shows goes on at Havlin's theatre this afternoon; it is entitled 'The Desperate Lord Barrington,' and there is nothing that could be said of it that could be used in St. Louis, where the community is thoroughly familiar with the remarkable story of Barrington's career from the time he appeared as an English nobleman up to the time when he went into the Clayton jail charged with murder. The company which will play the piece is headed by Oscar Dane and Victory Bateman."

Mr. GROVER. I will next offer the Post-Dispatch of January 10, 1903, Sunday paper, page five of the magazine number, with pictures, entitled "Lord Barrington on the Stage."

(This offer is in words and figures as follows:)

"LORD BARRINGTON" ON THE STAGE.

The remarkable melodrama in which the bogus nobleman wanted to play the part of the murderer.—Play written by a St. Louisan presents a comedy villian, the first ever seen on the stage, but the audience makes the chapter such.

200 Lord Barrington has been "put on," and the gallery at Havlin's Theater has had a new sensation.

A brand new type of villain has been presented to the discriminating upper part of the Sixth street temple of melodrama.

Nothing like the villain in the title role of the "Desperate Lord Barrington" was ever introduced to the chronic villain haters of that theatre.

The style down there has been to have low down villains addicted to the careless handling of long knives.

Only at long intervals have the Havlin audiences been granted the luxury of hissing a frock coat villain as he marched across the stage in front of the lower curtain in response to clamor. The desperate Lord Barrington is a frock coat villain, but he is more than that. He is an artistic villain.

And he is a funny villain.

The man who wrote the play did not intend that the villain should be funny and the man who plays the part did not intend to make it funny, but the gallery has steadfastly refused to take "The Desperate Lord Barrington" seriously.

He has not thrilled them with his villainy, and has not won the tribute of the hiss, but he has made the Havlin audiences laugh and they would almost as soon laugh as be thrilled.

When he is the most desperate and most villainous they laugh the loudest. The only thing that could tickle them more would be to see the St. Louis Lord Barrington, now stopping in the Clayton jail, in the title role.

The Clayton Barrington is not to blame that the Havlin audiences have been denied this pleasure. He wanted to appear in the part and tried to have the presentation of the play delayed until he could appear in it.

201 BY JOHN WINSLOW OF ST. LOUIS.

(Author of the Desperate Lord Barrington.)

There are several reasons, it seems to me, why the character of Barrington should make a hit on the stage; but the chief reason is one which did not occur to either of the authors until they saw the play produced before an audience. This is that the part of Leymour, which is supposed to correspond to that of the Clayton prison is a comedy villain—the first ever seen on the stage.

Even as the good people of St. Louis have refused to take Barrington seriously, so does the public refuse to take the villain seriously in the play. Instead of being greeted with the customary hisses this villain is greeted with laughter. His "A has" are taken as "Ha has," and those who come to jeer remain to cheer.

Barrington off the stage is a curiosity. He is the same on the stage. While he interests he fails to horrify. The insincerity of his love making adds to the strength of his other love scene. In other words, he proves a greater foil to the hero than the typical villain.

Barrington is also an interesting character on the stage because he is dainty. While not exactly a dandy, he is not the heavy stereotyped villain that has become such a nightmare in the ordinary popular-priced house. The average heavy could never play the part. The man who is to-day playing the part has always been known as a comedian. In spite of the fact that he is down on the company's books as a heavy he is still a comedian.

Barrington will make a hit on the stage because he is a freak.

Lord Barrington of Clayton jail is not pleased that "The Desperate Lord Barrington" has been put on without him being in the caste.

202 He has tried to have the performance pervented, and it is said that he will apply for a change of venue when the case in which he is charged with the murder of J. P. McCann is called for trial.

He wanted the performances stopped, because the play represents Lord Barrington as a desperate villian, whereas he, the Lord Barrington, of the Clayton jail, is a meek and mild victim of cruel circumstances. He will ask a change of venue on the ground that the production of the play has created such a strong prejudice against him that he can not get a fair trial in the vicinity of St. Louis.

All of this trouble would have been averted if the production of the play had been deferred until after the trial of the Clayton Barrington. It was his wish to be permitted to essay the title role after the courts had vindicated him and apologized to him for the annoyance caused by his prosecution. He expressed to the manager of the play a desire to appear. "I'm sure I'd make a great hit," he said.

But the manager was afraid he might have to wait too long and he went ahead with the arrangements, and the play was produced and has gone on the road.

The prisoner of Clayton is even stated to have been willing for prejudice to be created against him by the play provided he was permitted to share in the profits of the production even to the extent of $125.

Considering the local reputation of Barrington and the possibilities of his past career, it is not at all strange that he has been put upon the stage. Certainly no St. Louis criminal never offered the inducement to a dramatist that he has. He came to St. Louis unheralded and unsung. Quietly slipping into town, he managed to marry the daughter of one of Missouri's prominent families before any-

203 one learned of his presence. In fact it was not until he showed his inability to pay his hotel bill that the uniqueness of his character began to make itself manifest to the St. Louis public.

The Barrington of the stage is almost as unique in nature in the dramatic world as the original is off it. Out of him is created the first comedy villian ever seen on the stage. It was not originally intended to make such a character of him, but the public absolutely refused to take him seriously, and turned him into comedy whether he would or no.

In the play Barrington is not Barrington, but Frederick Lemour. He first appeared as a valet to Lord Cecil. Just why the dramatist should have made him a valet is not certain, but it is supposedly because the police declare that Barrington is but another name for one George Barton, valet to an English officer who was murdered, supposedly by his valet. This Barton, when accused of the crime, laughed in the officer's face and dared them to prove it. When

Lemour succeeded in electrocuting Lord Barrington he does about the same thing, and all during the rest of the play he is pursued by the nephew of the murdered man, in an attempt to force from Lemour the confession of his guilt.

This Lemour in the play, therefore, is a good deal more like the supposed Barton than like the man out in the Clayton jail.

Lemour has a plentitude of wives, and spends a good share of his time after the death of Lord Cecil in acquiring others. One of them has him arrested for bigamy in England. He is thrown into prison, from which he escapes. This is also in line with the record, which declares that Barrington is an escaped prisoner, although there has never been any application from anywhere to return him.

The police also declare that Barrington and Colonel
204 Burgoyne, a notorious confidence man, are one and the same person. The play shows Lemour masquerading as the real Lord Barrington in Brooklyn, where he is posing as a man of wealth and trying to marry the daughter of a wealthy mill owner. When he is discovered for what he is he blows up the mill. In that manner he gets away and comes to St. Louis.

If the things Lemour does in the first three acts of the play are no more like the real thing than the things he is supposed to do in St. Louis are like the facts as known, the authors have not shown very much of the real Barrington. They do manage to get him out to the quarry, where a free-for-all fight takes place, and some one is killed. It is not McCann, however, nor any one who corresponds to him. It is the English detective who has been tracing him about the country.

The last scene shows him in the Clayton jail. Lemour is seen through a transparency talking to one of his wives, and as the curtain goes down sits nonch'lantly puffing a fat cigarette, regardless of whether school keeps or not. And it is for such a take as this Barrington wants a change of venue.

If Barrington could have seen how St. Louis audiences took the part of Lemour he would he couldn't get out of jail to play it. When he was the most villainous, he got the mosy laughs. When any other villain would have been hissed, he was jeered. When the villain stepped on to the stage in the third act and announced "I am Lord Barrington," the audience invariably broke into laughter.

It was just as humorous to the auditors as when he tried to make love to a third woman with two of his wives concealed in the room. Barrington's attorneys have declared that they will take the matter of the plea up "with the British embassador." They tried to have the producer of the play declared in contempt by the St. Louis County court, but that court could see no contempt in it. If it is pre-
205 sented to him it is quite probable the British embassador would take the same view of the case as did Judge McElhinney.

In Barrington succeeds in clearing himself of the murder of McCann he will get an opportunity to play the part.

Accompanying this offer is a certain picture, which picture, however, has not been furnished the clerk by counsel, and hence cannot be inserted herein. (Note by clerk.)

Mr. BENO ALTHEIMER, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. Beno Altheimer.

Q. What is your business, Mr. Altheimer?

A. I am a lawyer—my profession is lawyer.

Q. You were the attorney for the defendant in this case until recently, were you not?

A. That is true; yes, sir.

Q. From about the time the case began up until a few days ago?

A. Yes, sir; I took charge of the case at the second sitting of the coroner's inquest, which was held at Clayton, up to within a few days ago.

Q. You are not in the case at the present time?

A. I am not, sir.

Q. You attend the preliminary examination of this case?

A. I did.

Q. Now, the preliminary examination was before Judge Campbell, justice of the peace in this county?

A. Yes, sir.

Q. How many times did you appear for the purpose of this preliminary examination about before Judge Campbell?

A. Well, that—including continuances and up to the time of the preliminary, I presume you mean—as best I remember, three or four times.

206 Q. Where were these appearances made, Mr. Altheimer?

A. One appearance was made at a point between what is known as the De Hodiamont terminal or the power house of the De Hodiamont line and the Columbia Hotel, at a small store.

Q. In the east part of this county?

A. Yes, sir. That store or office has the mark outside of "I. W. Campbell, justice of the peace."

Q. How many times did you appear there, Mr. Altheimer?

A. I think once.

Q. Then you appeared a number of times here at Clayton?

A. Yes, sir; some matter here in the court-house at Clayton, in the court room across the hall.

Q. When you first went out to that preliminary, in the east part of the county, Judge Campbell's office, what demonstration took place there by people in tents, and what was the kind of expression of opinion, and what was done down there by people in tents at this preliminary, so far as manifesting feeling one way or the other?

A. Out there at the preliminary examination held at Campbell's court, properly speaking in the eastern part of the county, the demonstration as against the defendant was most strong. In other words, prejudice ran high against him.

Mr. JOHNSTON. We object, and ask that that answer be stricken out. State what you observed.

Q. (COURT) State exactly what took place?

A. At that appearance each and every approval of the State's contention was met with favor by applause from the people, or words to that effect, or signs.

Q. At the final preliminary examination?

A. Pardon me a second. While on the other side, whenever a ruling seemed to be in favor of the defendant it was met with somewhat of derision.

207 Q. Did you mingle with the people before and after the court proceeding at that time?

A. I did; yes.

Q. What did you find with reference to expression among the people for and against the defendant?

A. The sentiment was unanimously against the defendant.

Q. State generally what was said. You know it will not be necessary to repeat the exact words. What was generally said by the people there as you mingled among them with reference to the defendant, as to guilt or innocence?

A. They thought he was guilty and hoped he would hang.

Q. Those were the expressions of the people at that time?

A. Yes, sir; the expressions of the people.

Q. When the final preliminary examination took place and the defendant was bound over to await the action of the grand jury here in this court and the justice of the peace announced his decision binding the defendant over, what, if anything, took place among the spectators?

A. There was applause—hand clapping.

Q. At the time of binding him over?

A. Yes, sir.

Q. Now, Mr. Altheimer, do you know anything about the putting on the boards of the Havlin's Theatre a play called the "Desperate Lord Barrington?"

A. Yes, sir.

Q. Did you attend that play?

A. Yes, sir.

Q. Please tell how the defendant was characterize in that play, if he was characterized.

A. The defendant was characterized.

Mr. JOHNSTON. We object.

Q. Was the defendant characterized?

A. He was; in such a manner that one who knew the defendant and saw the make-up of the character on the stage would have been struck with the resemblance of the two.

Q. There was an imitation of the defendant in the play?

208 A. Yes, sir.

Q. State what that imitation consisted of.

A. It consisted in the wearing apparel and most strikingly in the forehead and hair and method of parting the hair and general make-up.

Q. What about dialect or accent?

A. It was an attempt to impersonate the defendant in play, character, and mode.

Q. What was the character known as in that play?

A. Lemore.

Q. And it was advertised, too?

A. Yes, sir; it was.

Q. What was the character of that play that you saw?

A. One bill was "The Desperate Lord Barrington," on the placcard. In the southwest corner of the theatre was a little placcard.

Q. Southwest or northwest?

A. Northwest, I should say, in which it stated "A play of Intense Villainy." On other play boards there was a play called "The Desperate Lord Barrington," in which it showed scenes of the rescue of a woman from a dive and a man being pursued by detectives, and its entire description showed it to be a play of villainy.

Q. What demonstrations were made by the cast of any of them against the villain himself, whom I understood to say represented this defendant?

A. Yes, sir.

Q. The defendant was represented as a villain in that play?

A. Yes, sir; a villain of the deepest dye.

Q. What did the cast do with the villain?

A. They expressed it in one of our papers; the only reason every one didn't take a choke at this character was because they didn't have time to try to choke him.

Q. All tried to choke him?

A. Yes, sir.

Q. In the play was any scenery produced of a particular place—I mean of any of the places that bear on this case?

A. There were two, of striking importance at least, aside from the minor ones. There was one at the rock quarry, in which the
209 time is designated as 10.30 in the evening, and in that rock-quarry scene there was a party by the name of Leymour, who is the villain, representing Barrington in this play, and his friend by the name of McMann, appear at the rock quarry and they appear at the time of 10.30, and at the rock quarry they change hats and coats and there is a murder committed by McMann accidently killing one of the detectives. Another striking incident is the jail. This has a striking resemblance and is intended for the Clayton jail. Any one can see a striking resemblance, and this character, who purports to be Leymour, the villain in this play—Leymour is there in that jail and part of that scene, and the only part that mistified me was that I couldn't understand how this character, Leymour, reached the prison without ever passing into the jail.

Q. How was this villain portrayed in the play with reference to having a multiplicity of wives?

A. He seemed to marry everybody that came on the stage, and he succeeded in marrying two or three and was in the act of marrying

another when—and it was shown in the play that he had killed two and would have been willing to have killed three or four more if necessary.

Q. In this play where did this fellow Leymour seem to be from, and where did he seem to be going?

A. He seemed to have been a valet first. In the opening of the scene he was a valet in England—valet to an English lord. He then, through electrical contrivances, kills the lord.

Q. What lord?

A. The real Lord Barrington—this fellow kills him, and through some means holds the upper hand as against the real lord's wife. He seemed to have carried away many things of the lord's—his wife and military jacket, pants, and stockings.

Q. This took place in England, according to the play?

210 A. This fellow is supposed to be married, even at the time he takes the lord's wife. He then goes to America—but at first, I think, he makes his escape from prison in England and comes to America, and there is wined and dined, and we find him making love to the daughter of a rich mill owner in America, and at the same time he makes love to two of his own wives, and the third he tried to make his wife; making it a play in which he figures as a villain of the deepest dye.

Q. He is a bigamist?

A. Of course.

Q. Now, when he comes to America he escapes from prison in England?

A. Yes, sir; and then after he gets to America he succeeds with his electrical appliance; when he can't accomplish through any other method, he kills the mill owner of the mill. In other words, I would say it was a play in which it could be seen by any observer that it intended to show Leymour—the character of Leymour as a villain of the deepest dye—to be this man Barrington. There was no question of that. Anyone could see that. It was so clear that when this character came on the stage there was immediate applause, which showed the sentiment of the audience.

Q. At the time of playing some of the double-dyed villainy on that stage how did the audience seem to take it?

A. Well, the audience hissed continually at the character known as Leymour.

Q. What is the custom of people that go down there to Havlin's Theater, with reference to plays where the rôle of villain is played?

A. The custom at Havlin's is, when an act takes place which meets their approval there is applause—hand clapping—while, if the act appeals to their prejudices, they give forth their feelings in hisses.

Q. When the act of the villain is well played they hiss him?

A. Yes, sir.

211 Q. Was there any hissing done in this play by the people?

A. Continual.

Q. How many people attended this play while you were down there?

A. I should judge the sitting capacity of Havlin's Theatre to be 2,000, and there wasn't 100 seats vacant in that house.

Q. How long was this play played down there?

A. One week; that is, starting with the Sunday matinee—Sunday matinee, Sunday night, Monday night, Tuesday night, Wednesday matinee and night, Thursday night, Friday night, Saturday matinee and Saturday night, and a special matinee for New Year's, or Friday and Saturday matinee.

Q. It commenced on the 27th of December?

A. 27th of December.

Q. First Sunday after Christmas, 1903?

A. Yes, sir.

Q. Now, were there any St. Louis County people there that *that* you saw?

A. I wasn't there at night. I was there at the Sunday matinee.

Q. Did you see any St. Louis County people there that time?

A. That I couldn't say.

Q. Are the people of this county in the habit of attending the theatre down there?

Mr. JOHNSTON. We object.

COURT. You may answer, if you know.

A. Well, there are people in St. Louis County whom I presume have intelligence enough to become informed of what is being played in the theatres and visit every theatre in St. Louis.

Q. Now, Mr. Altheimer, here is an application for citation for contempt—you have seen this before?

A. Yes, sir.

Q. Go through that, and as you come to those newspaper articles state whether or not those articles were circulated in this county
212 or rather or not they appeared in the regular editions of those papers, and call them off?

A. There is an article here dated December 27th, Sunday morning's Globe-Democrat, a St. Louis daily paper, published daily in St. Louis and circulated throughout the city of St. Louis and county of St. Louis to this effect, "The Desperate Lord Barrington."

Q. Underneath there is a display ad*d*, too, isn't there?

A. Yes, sir.

Mr. GROVER. Now I offer both of those in evidence.

(This offer is in words and figures as follows:)

[St. Louis Daily Globe-Democrat, Sunday morning, December 27th, 1903.]

The Desperate Lord Barrington will be given its first production at Havlin's this afternoon and week, with a matinee New Year's Day. The play is the property of Havlin and Garen, who have had it under rehearsal for a number of weeks. An attempt is being made to repeat the success of The Stain of Guilt, which was produced by the same management last season. Miss Victory Bateman will head the cast, her chief support being afforded by Oscar Dane. Both are St. Louis favorites. The play has an English setting during the earlier part of the story. "Lord Barrington" is an English elec-

trician, who has an important experiment in hand. His valet, "Seymour," is in love with Lady Barrington, and in order to remove her husband he tampers with the experiment and causes the death of "Lord Barrington." He then gets possession of the fortune of the man he has killed and comes to America. The last act occurs in St. Louis, where a tragic ending is affected. The story uses a certain local episode, though the plot is for the most part fictitious.

The Night Before Christmas follows.

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Havlin's.	This week: The Desperate Lord Barrington.	
Come early. 25-cent matinees Tuesday, Thursday, Saturday. Nothing higher, and you can reserve them.		
Matinee to-day.	Victory Bateman and Oscar Dane, 2 St. Louis favorites.	The Desperate Lord Barrington.
The sensation of the season. Don't miss it.		

Q. What is the next?

A. There is next "In the St. Louis Republic, a daily paper of St. Louis, in the issue of December 27th, 1903, as follows: "This is an article and a display ad in a newspaper circulated in St. Louis and in the county of St. Louis and State of Missouri, page 2, "1A. "Then in the St. Louis Post-Dispatch, a daily newspaper published in St. Louis, issue of December 27th, 1903—a newspaper circulated in the city of St. Louis and county of St. Louis and in the State of Missouri, together with notice—display ad on page 3.

Mr. GROVER. I offer those in evidence.

(These offers are in words and figures as follows:)

"The Republic, Sunday, December 27, 1903.
Havlin's. This week: The Desperate Lord Barrington.
25c. matinees Tuesday, Thursday, Saturday. Nothing higher, and you can reserve them. Come early.
Matinee to-day: Victory Bateman and Oscar Dane, 2 St. Louis favorites. The Desperate Lord Barrington. The sensation of the season. Don't miss it."

214 The story of "The Desperate Lord Barrington," to be produced at Havlin's, is told in four acts. In the first act Frederick Seymour, the character about whom the play is written, is seen as the valet in the house of Lord Cecil Barrington, an English gentleman who is greatly interested in an electrical invention of his nephew, Jack Carleton. On the evening the story opens a test is to made of the invention. Several gentlemen have been invited to witness the test. Just before their arrival Lady Barrington receives a letter from her brokers demanding more money for margins. A money lender, Eisenstein, is also importuning her. She dare not tell her husband of her stock gambling, and at Seymour's suggestion takes a bond of her husband's to send to her broker as security.

She asks Jack to take it for her, and in the scene which follows it develops that Lady Barrington is in love with Jack, while he is in love with Grace Rawlins, a young American heiress who is visiting Lord Barrington. In this act it is also shown that Seymour is in love with Lady Barrington, although married to Nancy, the housemaid. When the invention is tested Seymour manages to cross the wires and Lord Barrington is killed by the shock. Jack, who is the only one who knows about the invention, is accused of the crime, as he would soon succeed to the title. The bond given him by Lady Barrington is found in his pocket and this is considered more proof of his guilt. Lady Barrington is forced to remain silent by Seymour, who holds a compromising letter she has written to Jack. In the second act Lady BBarrington has been forced into a marriage with Seymour through this letter. Jack is in prison, serving a fifteen-year sentence. Nancy appears and Seymour is arrested for bigamy. He was sent to the prison where Jack is incarcerated. They fight and Seymour escapes. Jack, after overpowering the guards, follows him in order to force a confession from him. In the third act Jack is shown as the
215 superintendent of a mill in Brooklyn, N. Y., owned by the father of Grace Rawlins. Lady Barrington and Nancy have come to America to find some trace of Lord Barrington's fortune which Seymour told them he had sent thither; failing, they had been obliged to go to work, and are found in the same mill. Seymour appears as Lord Barrington. He has Lord Barrington's wealth and Jack's invention and is trying to marry Grace Rawlins.

In the fourth act Seymour has come to St. Louis, where he is arrested for posing as Lord Barrington and marrying another wife. Jack and Lady Barrington follow him. He is decoyed to an old quarry by Lady Barrington under the pretense that she will give him $2,000 for the letter he holds over her. Eisenstein, who carries the note, tells Jack. He and a detective follow. Lady Barrington, who is well nigh insane, attacks Seymour with a knife. A fight follows between these persons on one side and Seymour and a friend by the name of McMann, who has come with him. The detective is killed in the fight. McMann flees and Seymour is arrested for his murder,

the body of the dead detective being identified as that of McMann. Oscar Dane is to play Barrington. Victory Bateman will be seen as Lady Barrington.

216 [Sunday morning, St. Louis Post-Dispatch, December 27, 1903.]

THE BARRINGTON SHOW TO-DAY.

The Barrington show goes on at Havlin's Theater this afternoon. It is entitled "The Desperate Lord Barrington," and there is nothing that could be said of it that could be news in St. Louis, where the community is thoroughly familiar with the remarkable story of Barrington's career from the time he appeared in the guise of an English nobleman up to the time when he went into the Clayton jail charged with murder. The company which will play the piece is headed by Oscar Dane and Victory Bateman.

Havlin's.	Mat. to-day. The Way of the Transgressor. The Desperate Lord Barrington.
Mat. to-morrow.	Victory Bateman, Oscar Dane.
	Look out for "The Desperate Lord Barrington."

Q. On page 4 what do you find?

A. There is printed and circulated in the city of St. Louis and county of St. Louis, State of Missouri, a newspaper known as the St. Louis Star, and another known as the St. Louis Post-Dispatch, and also the St. Louis Chronicle, all published in St. Louis and circulated in the city and county of St. Louis and State of Missouri. In each of these there were articles and display adds.

Q. On page 7 of that application there is a programme that purports to be a programme of Havlin's Theater?

A. Yes, sir; "Season of 1903–4."

Q. Was that circulated there at the time that play was going on?

A. Let me see. I can tell you in just a minute. Yes, sir.

Q. That was circulated?

A. Yes, sir.

Q. To the general public?

A. Yes, sir.

217 Q. Now, is there anything in that programme in reference to this Desperate Lord Barrington?

A. It says "The Desperate Lord Barrington."

Q. That is on what page?

A. Page 8 of the programme proper.

Q. This programme they distributed there throughout that play—distributed it to the general public?

A. Yes, sir.

Mr. GROVER. Now I offer these pages 8 and 9 and all of these other things we have identified. Exhibit L.

(These offers are in words and figures as follows:)

[Thursday—The St. Louis Star—December 24, 1903.]

Havlin's Theatre will offer a new production for the coming week's attraction. It has never been shown on any stage. Something unique is promised in "The Desperate Lord Barrington." Thrills and laughter are promised and the rehearsals indicate that the statement will be borne out. The character of the play, the fact that it was written by St. Louis authors, and the fact that it will be produced by local favorites with plenty of St. Louis scenery gives additional notoriety to the piece. The Way of the Transgressor in the current offering. The feature is the trained Landseer dogs in the show.

Havlin's. Mat. to-day. The Way of the Transgressor.
The Desperate Lord Barrington. Mat. to-morrow.
Victory Bateman, Oscar Dane.
Look out for the "Desperate Lord Barrington."

[Saturday, St. Louis Post-Dispatch, December 26, 1903.]

INJUNCTION DENIED BARRINGTON.

In the St. Louis County Circuit Court Saturday morning, Judge McElhinney refused to issue citation against Wm. Garen, Oscar Dane, Victory Bateman, and the St. Louis Theatre Company to show why they should not be held in contempt for advertising and producing the play, "The Desperate Lord Barrington," and
218 dismissed the case. The suit was brought by F. Seymour Barrington's attorneys to prevent the production of the play at Havlin's Theatre Sunday and the rest of the week. In their petition the attorneys claimed that the advertising and production of the play placed those mentioned in contempt of the court, as it tended to creat a prejudice against Barrington, who is to be tried next month for the murder of J. J. McCann. Attorney Seeber, for the St. Louis Theatre Co., and other defendants, submitted a decision of the Supreme Court in an exactly parallel case, holding that the defense charged constituted no defense. As a result Judge McElhinney refused to issue the citations, and the defendants are thereby permitted to produce the play to-morrow afternoon.

[The St. Louis Chronicle, Saturday, December 26, 1903.]

HAVLIN'S.

Beginning with Sunday matinee and continuing all the week with a special matinee New Year's Day, Havlin's will present "The Desperate Lord Barrington," which is built from the story of the notorious bogus Lord Barrington. Since his advent in St. Louis this

mysterious man has been almost continually before the public in one way or another, and he would be a poor dramatist indeed who could not write an intensely interesting play about the situations Barrington has furnished.

Havlin's. Mat. to day. The Way of the Transgressor.
Mat. to-morrow.
Victory Bateman,
Oscar Dane. | The Desperate Lord Barrington.
Look out for the Desperate Lord Barrington.

219 "Week Beginning Sunday Matinee, December 27th.

Matinees: Tuesday, Thursday, Saturday.

Oscar Dane and John Winslow's "up-to-second" melodrama, the desperate Lord Barrington. Produced under the personal stage direction of Mr. Oscar Dane and the management of Mr. Wm. Garen.

Cast of characters.

Miss Victory Bateman	Lady Barrington.
Lord Cecil Barrington	Mr. Wm. Trainor.
Jack Barrington, his nephew	Mr. Louis J. Russell.
Milkizedeck Eisenstein, a money lender	Mr. Jas. R. Waters.
Mr. Billings, a detective	Mr. Leslie DeBund.
Bell boy, in Hotel Cecil	Mr. W. Muchleisen.
Henry Rawlings, a owner of factory	Mr. Wm. Carlton.
Job Withers, father of Mary	Mr. Joseph Solari.
Bill Gleason, workman	Mr. Jos. Malaski.
Dan Finegan, workman	Mr. Chas. Fawcett.
Joe Lulkin, workman	Mr. Howard J. Hall.
Biddy, a prisoner	Miss L. Leyser.
Mary Withers, a factory girl	Miss Jessie Clement.
Nancy, a nurse	Miss Dorothea Wolbert.
Grace Rawlings, an heiress	Miss Florence Leslie.
and	
Mr. Oscar Dane	Mr. Frederick Seymour.

Laborers, prisoners, guards, ladies, gentlemen, etc., etc.

Synopsis of scenes.

Act I. Laboratory of Lord Barrington. Place, Kensington, England. Time, 1895. "Slowly the web weaves and surely will I own her, soul and body."

Act II. Bridal apartments, Hotel Cecil, London. Time, one year later. "A wife in name only." Scene 2. Corridor Ludgate Prison. Place, England. Time, one month later. "I can wait." Scene 3. Bull ring, Ludgate Prison. Time, the same day. "The brand of Cain."

Act III. Rawling's Stamping Works. Place, Brooklyn, N. Y. Time, seven years later. "Give the workman justice and he won't need your charity."

Act IV. Scene 1. Home of Nancy. Place, St. Louis, Mo. Time, the following month. "And for every lie you have whispered into a woman's ear you shall answer for to God above." Scene 2. Broadway, St. Louis, Mo. Time, the next day. "I will do it for kiss." Scene 3. Bonfils, near St. Louis, Mo. Time, Sep-

tember, 1903. Solving the great McCann mystery. Scene 4. Court-house and jail at Clayton, near St. Louis, Mo. Time, March, 1904. "The light of hope and love rekindled."

220 Q. Now, on page 11 of this application for citation for contempt there is what?

A. There is a song book with the outer page in large letters "The Desperate Lord Barrington."

Q. That is just the cover?

A. Yes, sir.

Q. On the inside is what?

A. There are a number of old songs.

Q. Songs?

A. Songs.

Q. Are they relative or irrelative matter?

A. Irrelevant; nothing to do with this case in the least.

Q. What do you find on page 12 of that application?

A. I find a number of pictures printed in the Republic for Monday's issue, December 28, 1903.

Q. That paper is published in the city of St. Louis?

A. A daily newspaper of the city of St. Louis, published in the city of St. Louis and circulated in the city and county of St. Louis, and State of Missouri. Headline: "Desperate Lord Barrington Gets a Choking Every Few Minutes at Havlin's, and Finds Occasion To Kick The Feet From Under The Heroine."

Q. There is a full review of the play there in pictures?

A. Yes, sir.

Mr. GROVER. I offer that and the pictures.

(This offer is in words and figures as follows:)

"The picture here referred to and called for is not contained in the bill of exceptions and has not been furnished the clerk, and therefore cannot be inserted herein." (Note by clerk.)

There may have been two minor characters who did not have an opportunity to choke the "Desperate Lord Barrington" during the initial performance of Dane & Winslow's melodrama at Havlin's yesterday afternoon, but if they were there they forgot their cues.

The choking that was done, however, was the most thorough that has been seen on a local stage this season, and it was not at all necessary to be a powerfully built "hero" in order to enjoy
221 this edifying pass time. A chance was given to almost everybody, even the concumptive factory girl with a forty-inch chest was not overlooked.

Now, was it imperative that the situation demanded a choking in order to have the hero grasp Barrington by the throat, and after getting a death grip endeavor to force a confession of guilt from the unfortunate man.

There would perhaps be an animated discussion relative to the just demands of labor when Barrington would dash across the stage and

apparently, without provocation, punch the heroine in the face or kick her feet from under her.

That was invariably a signal for choking. The hero never "dealt the villain a stinging blow in the face" or "felled him to the ground with his good right hand," but always quietly and without unnecessary violence laid Seymour upon the ground and spoiled his collar.

From the first scene, when Grace Rawlings, an heiress, causes excitement by her original method of fainting, there is plenty of action.

Grace first accuses her lover of murder, and then, overcome by his heartlessness, hurries across the room to a table, brushes a book upon the floor, arranges her skirts, and calmly extends herself upon the outer edge, where she is in *e*mminent danger of rolling off.

The plot of the play is original. It attempts to clear the early history of Lord Barrinton, and also furnishes the reason for his alleged visit to Bonfils last September.

The synopsis of the scenes refers to the Bonfils tragedy as follows: "Scene 3—Bonfils, near St. Louis, Mo. Time, September, 1903. Solving the great McCann mystery."

Oscar Dane, as Frederick Leymour, proves a very acceptable "Desperate Lord Barrington," after he has usurped the title of a dead English nobleman.

He early gains the hatred of the gallery, and his appear-
222 ance is the signal for generous hissing. In fact, Dane is such a success that yesterday afternoon the official bouncer was forced on several occasions to announce in loud tones: "If dat ain't cut out, I'll trow de geese out."

Victory Bateman is the most abused heroine (there are several of the latter, only Victory seems to get hers with more frequency than wife No. 1 of prospective wife No. 3); looks a trifle too healthy for the consumptive role assigned to her.

However, in the last act, when she appears with her hair about her face, seated in an armchair covered with a brilliant red blanket, she arouses the sympathy of the audience to such an extent that the choking she gives Barrington is heartily approved.

The play opens with a baby carriage, in which appears a real baby. Why it should be there is not disclosed, as it is hurriedly taken out.

Several other characters drift in, but do very little until Frederick Seymour, or Leymour, begins to show his hand. He learns various secrets regarding the wife of his employer, Lord Barrington, an elderly English nobleman, and attempts to gain her love by force.

Not succeeding, he vows vengeance, and, accidentally learning that Barrington's nephew, Jack Barrington, is the object of Lady Barrington's affection, plots to ruin him.

Lord Barrington becomes intimately acquainted with the business end of an electrical machine through the machinations of Leymour, but the latter places the blame upon Lord Barrington's nephew, and the latter is sentenced to jail for fifteen years.

The second act is rather confusing. It is divided into three scenes, the first having for its apparent object the introduction of a foot race,

during which Leymour sustains his reputation by being variously beaten and kicked by all the members of the company who can succeed in giving the stage manager a sufficient reason for allowing them on the stage.

223 The second scene allows the introduction of several Hebrew jokes and stories by James R. Waters, and also gives the stage hands time to shift the scenes for a jail interior.

Jack Barrington is shown in the character of a "trusty," and Frederick Leymour saunters out of his cell. Why he should be a convict is not explained, but he comes out in time to get thoroughly choked by Jack Barrington, who shows a desire to retaliate because he was barred from the general assault of the preceding scene.

Leymour calls for help, and as the wardens rush to his assistance, he skips upstairs, and presumably gains his freedom, as his next appearance is in America as Lord Barrington.

After Leymour's escape, however, there is an exhibition of ground and lofty tumbling that arouses the enthusiasm of the audience. Barrington grasps a chair and hurls it into a corner just to show how strong he is. He then grasps a rubber club and pounds everybody over the head. The third act brings the characters to America. All those in the previous acts are seen, with the exception of the original Lord Barrington, he of the electrical-machine fame.

During the progress of this act the bogus Lord Barrington attempts to marry the daughter of a wealthy mill owner, but, unfortunately, can not resist shooting electricity into persons, and with the aid of a little gun cotton he blows up the mill owner. The climax is another choking scene, perhaps better than any of the preceding ones.

The fourth act is laid in the vicinity of St. Louis. The first scene shows the interior of a lowly cottage, through the windows of which can be seen a valley surrounded with mountains. The second scene is on Broadway and the third is a weird mountain gorge called "Bonfils."

McCann is introduced in this scene. Barrington and McCann go there to meet a woman, one of Barrington's many wives, who has promised to pay him a large sum of money for a compromis-

224 ing letter.

Barrington, as usual, succeeds in getting thoroughly choked, but McCann rushes to his rescue and shoots wildly into the air. Several persons fall to the ground and McCann, with a muttered "I've tickets for South America; I must e'n flee this accursed spot," rushes hurriedly into the wings.

A quick curtain prevents the audience from seeing how devastating McCann's artillery practice has been, but the final scene shows the Clayton jail, and through a conveniently transparent brick wall Barrington can be seen writing a history of his life, which he gives to one of the women he has wronged and thereby brings joy and happiness to others.

The final curtain falls as Barrington smokes a fat cigar, evidently fortifying himself for the choking to be administered by the two

neglected members of the cast, who are waiting for him at the foot of the steps, justly indignant at the oversight of the man who built the play.

Q. Now, when the first application for citation was made—made previous to the one was made which you have just testified about—I will ask you if a copy was made of some of the advertisements of that play?

A. There was.

Q. And they appear herein, do they not?

A. They do.

Q. Those that are inserted in the application are true and correct copies of what they purport to be in this application, are they not; that is, in making these insertions you compared them with the originals?

A. Yes, sir; there is no question about it.

Q. And they are true and correct?

A. True and correct.

Q. Mr. GROVER. I offer the first application, dated December 24, 1903. It is marked "Exhibit M."

(This offer is in words and figures as follows:)

In the Circuit Court of St. Louis County, in the State of Missouri, September term, 1903.

STATE OF MISSOURI, PLAINTIFF, *vs.* FREDERICK SEYMOUR BARRINGTON, DEFENDANT.	Application for citation for contempt.

225 Now comes the defendant in the above entitled cause and states:

That he is the defendant in said cause, in which he is charged with murder in the first degree, and that his trial on said charge is set for hearing in said court on the 25th day of January, 1904.

That one Wm. Garen, and one Oscar Messing, alias Oscar dane, and The St. Louis Theatre Company, a corporation, and Victory Bateman, and divers other persons, have combined, confederated, and conspired between and among themselves for the purpose of doing the acts hereinafter mentioned, and of producing a certain dramatic and theatrical play and entertainment, at a certain public theatre and playhouse known as Havlin's Theatre in the city of St. Louis, Missouri; which theatre and playhouse is operated by said St. Louis Theatre Co., for the making of money, and of which company, theatre, and playhouse the said William Garen is the manager and which play and entertainment has been named and is called by said conspirators as "The Desperate Lord Barrington."

That the said play and the title thereof was constructed and selected by the said conspirators because of the fact that defendant is charged with murder in the first degree in said cause, and because defendant

has been contemptuously referred to by the press and many persons in the city of St. Louis, and in St. Louis County, and also throughout the State of Missouri and elsewhere throughout the United States as "Lord Barrington," and also because of rumors, and also hear my communications, concerning the details of the life of said defendant and of the alleged murder aforesaid, and that said play deals with the said rumored details.

That in said play the said conspirators have made out this defendant to be a villain, and intend to have said play produced and acted at the theatre and playhouse aforesaid on the 27th, 28th, 29th, 30th, and 31st of December, 1903, and on the 1st & 2nd days of
226 January, 1904, and also intend to play and act the same and cause the same to be played and acted at other cities in the United States.

That the playhouse and theatre at which said play is intended to be produced in the city of St. Louis is within eight miles of the courthouse where defendant is to be tried and within six miles of the boundary of St. Louis County, and is near the business center of the city of St. Louis, and on the corner of Sixth and Walnut streets in said city, and in immediate proximity of the street-car lines that go from said city into and throughout St. Louis County.

That the inhabitants of St. Louis County are accustomed to go to the city of St. Louis for theatrical entertainments, and also to the said playhouse and theatre for such entertainment, and that the said city is the chief place and resort of the inhabitants of St. Louis County for the purpose of commerce, business, and entertainment, theatrical and otherwise.

That if said play is produced, it will poison the minds of the inhabitants of St. Louis against defendant; will prejudice said inhabitants against defendant in his trial for the said alleged crime; will tend to influence the verdict and decision of the said cause wherein defendant is charged with murder; will also tend to have such influence against defendant; will also tend to and will increase the expense of defendant in making his defense, in that he will be compelled to overcome the prejudice created by said play; will be compelled to expend money in and about procuring a change of venue in said cause on account of said prejudice, and will be compelled to enter into many proceedings which otherwise would not be necessary to his defense.

That, pursuant to said conspiracy, the said conspirators have caused said play to be advertised; have given information to the daily press of the city of St. Louis concerning the same, and the intentions to act the same, knowing that the press would publish the same and thereby advertise the same in said city, in this county, through-
227 out the State of Missouri, and throughout the United States.

That the information given to the press aforesaid has been published and circulated in the county, and in all the places aforesaid, and has already created prejudice against the defendant, and has a tendency to create such prejudice.

That pursuant to said conspiracy, the said conspirators have caused large placcards, bills, prints, and advertisements to be pasted up upon bill boards throughout the city of St. Louis, advertising said play and the intention to play the same; that one of said bills is 40 feet long, 15 feet high; in large red and flashing letters, in words and figures as follows, to wit, "The Desperate Lord Barrington," and states that the same will be given New Year's week; which bill contains a picture of murderous assaults and the rescue of a woman from a dive by officers. That many similar and other bills have been caused to be posted by said conspirators throughout said city. That defendant files as a part of this application Exhibits A, B, C, D, E, F, G, and H, which are copies of the said bills and the said newspapers and other advertisements, and asks that the court consider the same as part hereof.

That said conspirators caused advertisements of said play to appear in the Post-Dispatch, the St. Louis Republic, the St. Louis Globe-Democrat, and other daily newspapers published in said city, and of general circulation in said city, in this county, and throughout the State of Missouri and the United States, and caused the said newspaper advertisements in the words, "The Desperate Lord Barrington," to be circulated in all the places aforesaid, and that said newspapers are the chief daily papers circulated among and generally read by the inhabitants of St. Louis County.

That one of said placcards posted up for public inspection and for advertisement of said play is located in the northwest corner of said theatre's lobby, the same being a public place where all the
228 general patrons of said theatre can see the same, is two feet long and eight inches high, and is in the following words and figures: "Mr. Dane has been especially engaged to appear with the 'Desperate Lord Barrington'—a wonderful play of the sublime passion and intense villainy.

"Sunday matinee, December 27th."

That said theatre company is a corporation duly created and organized under the laws of the State of Missouri.

That in furtherance of said conspiracy, the said conspirators caused to be published an advertisement in the programme of the said theatre and play house, which programme was circulated among the general public attending said theatre on December 23, 1903, and also on December 22, 21, and 20th, 1903, in the city of St. Louis, Missouri, which advertisement was in words and figures as follows, to wit:

"Havlin's, next Sunday matinee, Dec. 27. Special matinee New Year's (Friday). Miss Victory Bateman and Mr. Oscar Dane in 'The Desperate Lord Barrington,' the acme of sensational melodrama. A play filled with thrills, throbs, laughter, and tears. It quickens the pulse beats, excites the emotions, and stirs the better nature of every auditor. A play in which virtue wins and the vil-

lains get all that is coming to them. Lord Barrington—this strange man since coming into the West has been the hero of many escapades, and is now confined in the county jail on the charge of murder. In St. Louis he posed as a nobleman, and in this manner won and married the daughter of a prominent Missouri family. When he was discovered the young woman's brother gave him a beating, as a result of which Barrington was sent to the workhouse for six months. After he was released he was befriended by a prominent sporting man, and it is for his friend's murder that this so-called 'Lord' was indicted and is now in jail. His wife has secured a divorce."

Wherefore defendant asks that this court issue its citation to William Garen, Oscar Messing, alias Oscar Dane, the St. Louis Theatre Company, and Victory Bateman, commanding that
229 they and each of them appear before this court on a day to be named, then and there to show cause, if any they have, why an attachment should not issue against them for contempt of court; that an attachment issue for all of said persons last named, and that they be punished for contempt of court; that this court make an order prohibiting the production of said play, or any play under the name of Barrington, or any play under any name dealing with any real, rumored, alleged, or pretended details of defendant's life or of the alleged murder of which defendant stands accused, or any circumstances connected therewith.

F. SEYMOUR BARRINGTON.

STATE OF MISSOURI,
City of St. Louis, ss:

Beno Altheimer, of lawful age, being duly sworn upon his oath, says that he is the attorney of said F. Seymour Barrington; that he has knowledge of all the facts, matters, and things set forth in the above and foregoing application for a citation for contempt, and that all of the facts, matters, and things therein set forth are true.

BENO ALTHEIMER.

Subscribed and sworn to before me this 24th day of December, 1903.

F. J. HOLLOCHER,
Clerk of the Circuit Court,
St. Louis County, Missouri.

Q. Now, Mr. Altheimer, I will ask you if you ever saw this pamphlet before that I hand you?

A. Yes, sir.

Q. And you may state where you saw it.

A. In the lobby of Havlin's Theatre, in the city of St. Louis.

Q. Is there anything in that pamphlet that pertains to "The Desperate Lord Barrington?"

A. Yes, sir; on this page, in large letters.

Q. The facts are facts which correspond with the reputed statements in papers in reference to the defendant.

Q. Now, this pamphlet was circulated down there at Hav-
230 lin's Theatre, was it not?

A. Yes, sir.

Q. And that was before the play was put on the boards?

A. Yes, sir. That was the week prior.

Q. It is the custom in this theatre, the week prior to when the play will take place, to insert what will be in the following week in the programme of the week previous?

A. Yes, sir.

Q. And this is one of those programmes?

A. Yes, sir.

Mr. GROVER. We offer this in evidence. It is marked "Exhibit N," and is in words and figures as follows:

"Havlin's

next

Sunday matinee, Dec. 27. Special matinee New Year's (Friday).

Miss Victory Bateman and Mr. Oscar Dane in The Desperate Lord Barrington.

The acme of sensational melodrama.

A play filled with thrills, throbs, laughter, and tears. It quickens the pulse beats, excites the emotions, and stirs the better nature of every auditor. A play in which virtue wins, and the villains get all that is coming to them.

Lord Barrington

This strange man since coming into the West has been the hero of many escapades, and is now confined in the county jail on the charge of murder. In St. Louis he posed as a nobleman, and in this manner won and married the daughter of a prominent Missouri family. When he was discovered, the youn*d* woman's brother gave him a beating, as the result of which Barrington was sent to the workhouse for six months. After he was released he was befriended by a prominent sporting man, and it is for his friend's murder that this so-called "lord" was indicted, and is now in jail. His wife has secured a divorce."

Q. Now, Mr. Altheimer, I hand you here a scrapbook. Now, on page 10 of this scrapbook appears a heading on the side and three columns of an article straight down the page. Now, state, if you know, where this newspaper article that is posted
231 in this book and the heading there came from?

A. This is from an edition of the St. Louis World, a newspaper. It is on the left-hand side of the page—the large one.

Q. They are both from the World?

A. No; this is from the World on page 10, both pieces, and from

the St. Louis World from its edition of June 26th. It is a daily newspaper, published in the city of St. Louis.

Q. Now, everything on page 10 is from the St. Louis World?

A. Yes, sir.

Mr. GROVER. I offer that in evidence. It is marked "Exhibit O," and is in words and figures as follows:

Lord Barrington again in hands of St. Louis police. Arrested on charge of being responsible for disappearance of wealthy James P. M'Cann—Murder charge may result—Extraordinary story of midnight assault in the woods near suburban park—Women in the case.

F. Seymour Barrington, the famous former workhouse prisoner, was arrested last night on suspicion of being responsible for the mysterious disappearance of James P. McCann, of 2902 Franklin avenue.

Back of the arrest is an extraordinary story.

For some four or five weeks past Barrington has been boarding with McCann and his wife at the address named.

He became acquainted with McCann while he (Barrington) was manager of the saloon at Broadway and Chestnut street.

Friday night, after supper, Barrington and McCann went out, ostensibly to purchase some medicine for Mrs. McCann, who was feeling unwell, at a neighboring drug store.

McCann never returned, but Barrington did so at 8 o'clock Saturday morning.

He returned with two black eyes, his clothes badly torn and bespattered with blood and mud, and with a pocket handkerchief saturated with blood.

He told Mrs. McCann an extraordinary story.

232 He said that he and McCann had visited Suburban Park together.

While taking in the entertainment they were approached by two men and two young women, with all of whom McCann seemed to be well acquainted.

The newcomers sat with Barrington and McCann, and the latter engaged one of the young women in a conversation which after a while sank into whispers.

Following this conversation McCann and the young woman to whom he had been talking arose and left the park.

The two young men followed, and, in turn, Barrington also followed, leaving the second young woman behind in the park, alone.

After getting out of the park the three men heard a woman's screams coming from the woods west of the park.

The two young men rushed forward, with Barrington bringing up the rear.

According to Barrington's story, when he reached the scene of the disturbance he found his friend McCann on the ground with the

two young men standing over him beating him unmercifully with sticks.

The young woman was standing close by, still screaming.

Barrington rushed to his friend's assistance with the result that the young men turned on him, attacked him brutally, and left him unconscious.

On partially recovering his senses, about ten minutes later, the two young men and the young woman were standing over him.

McCann, he says, asked him if he had any money, and Barrington gave him $27.50, which he thought was all he had with him.

McCann gave part of this money to one of the young men, who went off and returned about fifty minutes later with a four-seated carriage.

McCann bid Barrington good-by, saying he was going
233 away with the girl.

According to Barrington, McCann asked him to settle certain personal debts, saying he was about to leave the city.

McCann and the girl, accompanied by the two young men, entered the vehicle and drove off in an easterly direction.

This was, says Barrington, the last he saw of his friend McCann.

Shortly after this he lost consciousness again and remained recumbent on the ground in the woods until 6 o'clock Saturday morning.

He then walked to the McCann home—a long distance—and told Mrs. McCann his story.

She accepted it in good faith until Monday morning last, when a note was received by Barrington, supposed to be from McCann, asking him to tell McCann's wife to send him $300 to Centralia, Ill.

Barrington advised her not to send the money.

On Wednesday Mrs. McCann, through Barrington, received word to the effect that her husband did not need the money.

At this Mrs. McCann became suspicious of the whole affair and went to see her lawyer, A. D. Davis, in the Roe Building, who advised her to consult Chief Desmond.

She called on the chief, accompanied by her lawyer, Thursday afternoon, and, on hearing the strange story, Detectives Schmidt and and James were detailed on the case.

They found Barrington on the street at Garrison and Franklin avenues about 6 p. m. and arrested him.

When brought to the Four Courts he told Chief Desmond the same story that he had told Mrs. McCann.

Chief Desmond, determined to get to the bottom of the matter, sent Detectives Cordell, Schmidt, and James with Barrington to the scene of the assault late last night.

When they arrived there Barrington described the affray with full details.

234 The men were accompanied to the scene by a World reporter.

Barrington, after going over the lonesome route, described the assault and how he stood over the prostrate body of McCann and protected him until he was knocked senseless with a blow on the jaw.

After the carriage arrived Barrington claims McCann came to him and asked him to get into the carriage and go away with him, but he *refused on the ground that he had been treated too roughly.*

Barrington described how he was kicked into a ditch while he was lying on the ground dazed. After being taken over the ground twice Barrington was walked over the route supposed to have been taken by the party after leaving the scene of the battle.

Later he was placed on an Easton avenue car with the three detectives and taken to the Four Courts, where he will be held until to-day, when he will again be questioned by Chief Desmond.

Barrington seemed indignant over his arrest, but later took it calmly, and stated that he knew McCann would turn up well in a few days.

It is alleged that McCann's wrist was broken in the fight and that he was also badly beaten up.

McCann is a well-known sporting man and at one time owned a string of race horses at the fair grounds.

For the last few years he has been at times a bookmaker at the different tracks.

At the time of his disappearance he wore about $2,000 worth of diamonds and a valuable watch.

Mrs. McCann's fingers were covered with costly jewels when she appeared at the Four Courts last night.

She is a good-looking woman of about 25 years.

She is distracted over her husband's disappearance.

235 Barrington's career in this city has been an extraordinary one.

Coming here early in December last, he represented himself to be a lieutenant-colonel in the British army and claimed he was in St. Louis as special commissioner of the English Government to the Louisiana Purchase Exposition.

He was cordially received by the World's Fair authorities, shown over the site, and extended every courtesy.

Upon his arrival here he put up at the Southern and at other first-class hotels.

After a while, however, he took up his residence at the fashionable boarding house of Mrs. R. R. Elliott, 4368 West Belle place.

Here it is said he represented himself to be Lord Seymour Barrington, of Melrose Castle, Brighton, Sussex, England.

Mrs. Elliott, apparently feeling that an English lord would make a desirable addition to her family, wrote to her younger sister, Miss Wilhelmina Grace Cochrane, then in Kansas City, to come on here for a visit.

Miss Cochrane came on, and, it appears, was introduced to Barrington as the daughter of a wealthy Kansas City pork packer, although it is not in evidence that she was of an especially wealthy family.

Mr. Cochrane was a good-looking young woman, and Barrington laid swift and determined siege to her heart and hand.

He was entirely successful in his suit and won, at least, the hand of the fair Kansas Cityan, after a two weeks' acquaintance.

They were married at the home of the bride's sister on January 22.

The marriage license was issued by Recorder of Deeds Paul C. Young, read "Lieutenant-Colonel F. Seymour Barrington, of the Horse Guards, London, S. W., England, and Wilhelmina Grace Cochrane, of Kansas City, Mo."

236 On the Sunday following the wedding the St. Louis newspapers printed long accounts of the romantic marriage, together with pictures of the bride and groom.

Another feature of the newspaper accounts was a large illustration of Melrose Castle, said to be the handsomest home in all England.

This, the stories had it, was the property of Col. Barrington, and he had given it to his young wife as a wedding present.

Outside newspapers copied the story and Lieutenant-Colonel Frederick Seymour Barrington, of London, England, and his beautiful bride, formerly Miss Wilhelmina Grace Cochrane, of Kansas City, Mo., had much space devoted to them.

The bride's brother, James F. Cochrane, of Kansas City, read these stories and, suspecting that Barrington was not all he claimed to be, came on here.

He questioned the bridegroom closely and was not satisfied with his answers.

A quarrel ensued and the men went out on the front porch and resorted to handcuffs.

Barrington is said to have gotten the worst of the encounter.

Police Officers Reeves and Turner heard the disturbance and, going to the scene, arrested both men.

Cochrane was subsequently released, but Barrington was held and a charge of disturbing the peace placed against him.

This was on Sunday, February 1.

Barrington was unable to give bond and after languishing in the Carr street holdover for two days was, on February 3, sentenced by Judge Daniel O'Connell Tracy to pay a fine of $500.

This was the maximum penalty allowed by law for the offense with which Barrington was charged, and in imposing it Judge Tracy delivered a scathing address to the defendant.

Barrington being without friends was taken to the work-
237 house and put to work in the stone quarry.

After being there a few days dispatches were received from the East stating that Barrington was the notorious English criminal named Barton, alias Burgoyne.

It was said that he had served several terms in English prisons and that he was wanted in Philadelphia, New York, and other cities on charges of bigamy and other serious crimes.

Pictures claiming to show that Burgoyne and Barrington were identical were published.

Barrington behaved well while in the workhouse and treated all the bad stories told concerning him with derision.

"I am not Burgoyne nor Barton—bring on my accusers," was his answer to all the incriminating assertions.

Wealthy persons, feeling that Barrington was being treated too harshly, interested themselves in his behalf.

Of these, Fred H. Gerhart, a well known real estate man, engaged Colonel John I. Martin to take up Barrington's case.

He gave him carte blanche as to expense.

Colonel Martin, on behalf of Barrington, commenced suit in the Jackson County courts against young Cochrane, charging him with assault and defamation of character.

He asked $10,000 damages.

This suit is still pending.

As a result of it a commissioner was appointed to take evidence.

Barrington, his wife, and others testified.

A copy of his testimony, which clearly showed that Barrington had not been the aggressor in the case, was laid before Mayor Rolla Wells.

The mayor, after perusing the transcript of the evidence, issued a pardon, and as a result of this Barrington was released April 11.

Friends supplied him with good clothes and he was installed
238 by J. W. A. Gillespie, proprietor of the Hyde Park Buffet, as manager of that establishment.

The buffet in question is located at the northeast corner of Broadway and Chestnut streets.

Large signs reading: "Lord Barrington Saloon," were placed over the doors and windows, and for several weeks a rushing business was done.

Barrington proved both an affable, gentlemanly fellow and a great drawing card.

Towards the end of May, however, the "English lord's" drawing abilities appear to have given out and he lost his position.

It is said that he then became a life-insurance agent.

Nothing has been heard of him since leaving the saloon management until last night's episode.

Barrington's wife refused to become reconciled to him and is suing for divorce.

Barrington has always claimed that he was guilty of no wrongdoing toward her.

He says he married her because he loved her, and says further that he never claimed, to either her or her sister, that he was a lord.

He says that his title Lord Barrington came about as the result of an after-dinner jest.

Q. On pages 22 and 23 appear newspaper clippings; what are they, Mr. Altheimer, and where are they from?

A. The larger one of the two, four columns, is from the Globe-Democrat of June 28th.

Q. The Globe-Democrat, of St. Louis?

A. Yes, sir.

Q. And what is the smaller one from?

A. From the St. Louis World, of St. Louis, of June 28th edition.

Mr. GROVER. I will offer them in evidence. Insert pages 22 and 23. (This offer is in words and figures as follows:)

[Globe-Democrat.]

239 M'CANN'S WIFE IS CROSS-QUESTIONED BY THE POLICE—BARRINGTON'S STORY IS CONFLICTING.

Bogus lord finally declares that McCann drove away with the two who assaulted him—Railroad employes identify Barrington as man they saw on car with McCann, whose body was found in quarry—Will make second identification to-day—Some of deceased's effects found in Barrington's trunk—No marks of violence on McCann's body—Peculiar conduct of his wife—Bogus lord's career.

At 2 o'clock this morning "Lord" Barrington was in the Four Courts holdover bemoaning the fate that again made him a prisoner, and declaring that he was a much-abused man.

Though really a man of distinction, he said, he had been abused and mistreated and misunderstood ever since he came to St. Louis. McCann, whom he was suspected of murdering, was his friend, he moaned, and he would have thought of injuring himself as soon as of harming a hair of McCann's head.

"Am I under arrest?" asked Barrington of Chief Desmond, when the sweating was ended.

"You certainly are," replied the chief, sharply, and the bogus lord, wearing the late Tom Allen's silk hat and his own Prince Albert coat, was led to his cell.

M'CANN'S BODY TO BE EXHUMED.

All witnesses, including Mrs. McCann and several who knew McCann, will be taken this morning to Bonfils, where the body of McCann will be exhumed, to be identified in a legal way.

After the inquest yesterday the body was buried by the side of the quarry, in which it was found, without being identified, by the shoes and purse which were brought to Mrs. McCann. There is no doubt that the body is that of McCann, but to make the case complete it must be identified in a legal way.

TRIAL AT CLAYTON.

McCann's murderer will be tried at Clayton, the county
240 seat of St. Louis County, unless a change of venue is taken, which is not probable. However, the work of securing the evidence devolves on the St. Louis police, and to make their case a prima facie one they will demand that the body be again exhumed for identification.

BODY FOUND IN QUARRY.

The body of James P. McCann, the turfman, who disappeared mysteriously one week ago last Thursday night, was taken from a quarry near Bonfils, St. Louis County, yesterday morning.

Not a mark of violence was found on the body, though Coroner Otto Koch was of the opinion that the flesh of the face, which was decomposed, had been contused.

"Lord" F. Seymour Barrington, who of late has been making his home with Mr. and Mrs. McCann at the Leland Hotel, 2901 Franklin avenue, was arrested by Special Officers Gratiot Cabanne and Kirk, of the mounted police district, soon after the discovery. Yesterday afternoon Barrington sent his packed trunk to the Union Station and was expecting to leave the city last night, it is said.

BARRINGTON MAKES ADMISSIONS.

At the Four Courts last night he admitted to Chief of Detectives Desmond, his assistant, John Keeley; Chief of Police Kiely, Night Chief C. G. Gillaspy, and Capt. McNamee, of the mounted district, that he had acompanied McCann to the place where the body was found, on the night the man disappeared.

After he was taken from the patrol wagon at the mounted district station yesterday afternoon McCann's diamond stud, valued at $100, and his valuable gold watch were found under the seat, where they had evidently been placed by the bogus lord. Mrs. McCann positively identified the articles of jewelry of her late husband last night.

At a late hour Mrs. McCann and her sister, Mrs. Mamie Evans, of Wakeman, Ky., were also being held at the Four Courts to again tell what they know about the case.

McCann's body was really discovered in the abandoned
241 quarry last Thursday by a negro, but it was not reported until yesterday. Then the coroner took charge of the remains, held an inquest, and buried them by the side of the quarry where the unfortunate man lost his life.

THE BODY IDENTIFIED.

Soon after the body was recovered from the quarry the mounted district police were communicated with. They, in turn, telephoned the chief at the Four Courts, who was certain that the body was that of McCann. Mrs. McCann was notified and, accompanied by her sister and friends, started for the scene to identify the body. On the way she met Special Officers Cabanne and Kirk, who had with them McCann's pocketbook and shoes.

Mrs. McCann at once recognized these articles as the property of her husband. She gave way to her grief and was brought back weeping to her home.

In the meantime Chief of Detectives Desmond had detailed 10 officers to arrest Barrington. The chief had suspected him from the time he told his strange story Thursday night.

ARREST OF BARRINGTON.

Special Officers Cabanne and Kirk went to the Leland at 2901 Franklin avenue. They saw Barrington looking out into the street from a second-story window. When he saw the officers approaching he ran from the second floor and attempted to escape through the rear door. The officers ran around behind and met him as he was about to make his exit.

"I'll not go with you," said Barrington, in his peculiar English drawl.

"You will, too," retorted Cabanne, drawing his revolver. The sight of the officer's weapon cooled the bravery of the bogus lord and without further ado he went with the officers to the mounted district station.

MOTIVE OF CRIME.

Barrington is believed to have enticed McCann into the 242 county by telling him that he (Barrington) had an insurance policy on which he could raise $1,000 by visiting friends near Bonfils. Both were nearly out of funds when they left the Suburban Garden, and as McCann had been drinking it is believed that the thought of raising a large amount of money at once was too tempting to be resisted.

Barrington's motive is believed to have been jealousy, robbery, and love of McCann's wife. Whether the latter was reciprocated by the woman is yet to be proven, but it seems very probable.

On the night that McCann disappeared he had on his bookmaker's tickets worth $159. It is believed that Barrington, himself almost penniless, desired to get these. The next day the "lord" cashed the tickets downtown, giving Mrs. McCann $54 and keeping $105 himself. He claimed that he had loaned McCann more than this and that it was but right that he should have it.

DISAPPEARANCE REPORTED.

Thursday night McCann's disappearance, dating from a week previous, was first reported to the police by Mrs. McCann and her attorney, A. C. Davis. It was then that several strange stories were told, though Barrington with his bold front was able to get away from the police, after spending but twenty hours in the hold over.

Mrs. McCann said that Barrington had come home early Friday morning, following the failure of her husband to return, covered with mud and blood from head to foot. He had told her, she said, that he and McCann had gone to the Suburban Garden Thursday night. Previously they had gone to the Compton avenue pharmacy

to get headache powders for her, but instead of returning home they went to the garden.

There, Barrington told Mrs. McCann and later the police, they had met two men and one woman. All of them went north from the garden to a meadow where, after the woman had given vent to screams while she and McCann were alone, the two men has assaulted McCann with canes.

243 RUSHED TO FRIEND'S DEFENSE.

Barrington gave a dramatic description of how he had rushed to the defense of his friend and benefactor to protect him, and as a result was himself assaulted. He was kicked down in the mud and into a ditch, he declared. He did not recover consciousness, he said, until the next morning, when he walked back to the Leland. A carriage had driven up, he said, in which McCann, the two men and the woman had driven away.

Before leaving Barrington said that McCann had come to him and told him that he was in the hands of his friends; that they had had trouble, which all regretted, and that he did not want to face Mrs. McCann in his condition. He would hide for a time. The bogus lord said that one of the horses driven to the carriage was a bay, and this statement gave him trouble. The police could not understand how, in the darkness and rain, he could distinguish the color of one of the horses.

Accordingly, Chief Desmond ordered three detectives to take Barrington over the ground where the alleged assault was committed. Late Thursday night the visit was made, Barrington leading the way, wearing the late Tom Allen's tall silk hat. Apparently he "made good" on the story, except as to his power to distinguish the color of the horse. He was released Friday.

ADMITS ASSAULT STORY FALSE.

Last night Barrington admitted that he had lied about the assault of the men and as to the woman in the case. He was confronted by John Oellien, a motorman on the St. Louis, St. Charles and Western car that left the end of Easton avenue at 10 o'clock the night that McCann disappeared, and also by the conductor of the car, Isaac Bennett. They said that Barrington and McCann had boarded their car at 10 o'clock, leaving it at Bonfils, where the cars have been stopping during the flood. Bennett picked Barrington out of a crowd of a dozen men and identied McCann from a tintype picture taken at Suburban Garden the night the turfman disappeared.

244 Bennett said that Barrington sat in the rear seat on the left-hand side of the car. On the seat in front of him sat McCann. Both apparently had been drinking, though neither was drunk. They had not spoken to each other going out. In front of

McCann sat a woman going to a camp meeting between Wellston and Bonfils.

McCann struck up a conversation with the woman. She gave him her card, on which was a scriptural quotation, and as she left the car told McCann that she would pray for him. McCann had given the conductor his card, which caused him to remember him so well, and also because he sat near a woman in an invalid's chair, which the conductor had helped carry on the car before leaving Wellston.

ANOTHER IDENTIFICATION.

Charles Sack, another motorman for the St. Louis, St. Charles and Western Electric Line, and Louis Hisserick, a foreman for the same company, told the police that they had seen Barrington returning home along the road the next morning, and that he was covered with mud. They also positively identified the bogus lord as the pedestrian. He had missed the last car returning Thursday night, which left Bonfils at 10.30 o'clock, and it is believed was afraid to return under cover of darkness. Accordingly, he waited until morning to make his pilgrimage.

McCann and Barrington, the conductor and motorman said, left the car when it reached Bonfils, walked about 100 yards west, where they came to a road down which they turned south. While they were waiting to make their return trip they heard two shots and cries for help in the direction where McCann's body was later found, though no bullet wounds were found on the body.

Confronted with this evidence, Barrington confessed to the police that the story he told them last Thursday night was as bogus as his name. He admitted that he had taken the St. Louis, St. Charles and Western car, and had gone with McCann to Bonfils. He admitted that he walked back home the next morning. However, he continued to deny the murder.

VERDICT OF MURDER AT CORONER'S INQUEST.

McCann's body was found in an abandoned stone quarry belonging to the Wabash Railroad, on Taussig avenue, 200 yards south of the tracks of the St. Louis, St. Charles and Western Railroad, at Bonfils Station, Thursday, by Lewis Tucker, a colored man, living in the neighborhood.

Tucker claims to have notified a justice of the peace at Bridgeton the same day. Charles Goodfellow, superintendent of the electric railway company, was also notified, and claims to have telephoned for the coroner.

The decomposing remains could be smelled for a long distance yesterday, and the coroner was finally apprised of the affair. When Coroner Koch reached the place the body was still in the water, which is about 15 feet deep. He had taken it out to the bank.

NO MARKS OF VIOLENCE.

A thorough examination was made by Dr. Koch for external evidences of violence, but none was apparent. He stated positively that there were no bullet holes in the body, unless they were in the face, from which the flesh had fallen away.

Dr. Koch does not believe that the man found was shot, for even if the ball had entered his face it would have come out at some point where the wound could be detected. "I have no doubt that it was McCann and that he was drugged," said the coroner.

MURDER IS CORONER'S VERDICT.

Murder was the verdict of the coroner's jury, though there was nothing on which to justify a definite decision as to how the deed was committed. The murder verdict was reached by reason of all the attending circumstances.

No one would think of going to the old quarry to swim, for it is a repulsive hole of water surrounded by a dense growth of underbrush, the branches of which hang down into the water. The 246 water is not clean, and there is no place where one could stand in the water.

Backwater from the Missouri River went into the place during the recent flood, but it would be practically impossible for the current to have carried the body there because of the thick underbrush surrounding it.

M'CANN'S PROPERTY FOUND.

McCann's pocketbook was found near the west bank of the water. The shoes were picked up by Julius Krueger, a farmer, while cutting wheat Thursday. They were several hundred feet from the old quarry and were about sixty feet apart. Martha Lange found the pocketbook and also a razor handle, bladeless. Four loaded and one empty cartridges were also picked up near the quarry.

The shoes, low-cut patent leather, and the pocketbook were the first articles identified by Mrs. McCann. She fainted as soon as she saw them and was taken back to her home.

No other articles of clothing have been discovered. The body was nude and so decomposed that identification would be almost impossible. Coroner Koch believes the man was nearly six feet tall, well built, with brown hair and a sandy mustache. No special marks were noticeable.

NEGRO TELLS OF HIDING BARRINGTON'S CLOTHES.

An important witness in the case is Charles W. Morrison, a negro porter at the Leland, who does not live there, however. He told the police last night that when Barrington returned home one week ago

last Friday morning he was covered with mud from head to foot. There was also blood on his clothing.

Barrington had the porter remove his clothing. The blood made him suspicious and he asked where his master, McCann, was. Barrington replied with an oath that the negro was a porter, and as such should attend to a porter's duties. It was none of his business what had become of McCann.

MRS. M'CANN REHID CLOTHES.

Barrington then told the porter to hide the clothes he had
247 just removed in a barrel. This the porter did, but when he went home he told his wife, Jessie Morrison, about the strange ocurrence. Mrs. Morrison, a maid at the Leland, told Mrs. McCann about the hiding of the clothes, and Mrs. McCann told the Morrison girl to take them out of the barrel and hide them in a box, but to say nothing to anyone. This was done.

Mrs. McCann explained this strange action to the police last night by saying that she thought the clothing might be wanted as evidence, and she had decided to secrete the garments, although she delayed saying anything about her husband's disappearance until a week later.

Monday following McCann's disappearance his wife received a telephone message to send $300 to McCann at Centralia, Ill.; that he was with friends, but needed money. Mrs. McCann told the police that Barrington advised her not to send the money. He had returned to the house but a short time before the message was received.

BARRINGTON WROTE MESSAGE.

A few days later a written message was received, inclosed in a Missouri District Telegraph envelope. This message was signed "E. M., for J. M." It stated that McCann was in the hands of his friends and that he did not need money. Barrington admitted last night that he had had this message written and sent to the house.

M'CANN'S EFFECTS FOUND.

Mrs. McCann told the police last night that she had told Barrington after the events of Thursday night succeeding the disappearance of her husband that he must leave the place. Barrington pleaded to remain until last night, when he said he would go under cover of darkness.

Yesterday afternoon when he heard of the finding of McCann's body Barrington packed his trunk and sent it to Union Station.
This trunk was opened last night at police headquarters. In it
248 was found the cane which McCann carried the night he disappeared and also a .38-caliber revolver and a box of cartridges, besides personal wearing apparel that apparently had no bearing on the case. Cartridges found near the scene of the death of McCann fit the revolver.

BARRINGTON GOES BACK TO ORIGINAL STORY.

Barrington changed back in part to his old story at 12.30 o'clock this morning, when Chief Desmond sent his "lordship" to the hold-over for the night, to be again sweated this morning. In making his final statement he was semidefiant and as cool as ever.

"Mr. McCann and myself went to the Suburban Garden together, as I have stated before," said the bogus lord. "There we had several drinks, and finally met two men and one woman. McCann insulted the woman."

[The World.]

LORD FREDERICK SEYMOUR BARRINGTON IS THE CRUEL AND BLOODY MURDERER OF JAS. P. M'CANN.

Barrington and McCann walked down the road.

The car, which was at a standstill on a thirty-five minute wait, had only the conductor and motorman on board. As McCann was leaving the car he gave the conductor his card and said when leaving: "Come and see me."

The conductor put the card in his pocket. But later he gave it to the motorman and told him about the man he had gotten it from.

While the conductor and motorman were in the car reading the paper and from ten to fifteen minutes from the time Barrington and McCann had left them they heard two shots fired.

Each called the attention of the other to the shots, but thought no more of it at the time.

The motorman said that he remembered the name "Leland Hotel" on the card which the conductor gave him and that he flipped it off the car.

Last night the conductor positively identified Barrington
249 as the man who had ridden out with him on the night in question.

The motorman positively identified McCann's picture. So here was a case of double identification.

BARRINGTON WALKED HOME.

Barrington walked all the way home from the scene of the murder.

There is also good proof of this.

Louis Hesserick, a foreman of the St. Louis, St. Charles and Western Railway, saw Barrington walking along the track early the next morning with a handkerchief tied around his face, as though to conceal his identity.

Charles Sack, a motorman on the same line, also saw Barrington that morning. Both say that he tried to get away from the searchlight which they threw on him.

Going out, Barrington wore a fedora hat. But coming back, when these men saw him, he had on McCann's panama.

It looked as though Barrington had murdered McCann out in the county.

It looked as though he had stripped him of all his clothing and then carried the naked and bloody body on his back to the quarry pond.

It looks as though—in fact it is a certainty—that Barrington changed hats with the dead man, and wore McCann's hat at least to the city limits. He probably changed to his own then.

GETTING READY TO LEAVE.

There is all sorts of evidence to prove that Barrington received early news of the finding of McCann's body, and that he was making ready to leave the city in a hurry.

He told the people in the hotel he was going away on Saturday night, but on Saturday afternoon he hurried his trunk out of the house.

Soon after the arrest was made last evening Detective
250 Harrigan searched the Leland and found that Barrington's trunk was missing. He went from the hotel to Union Depot, where he found Barrington's trunk. It had been moved from the hotel to the depot between 2 and 3 o'clock in the afternoon.

THE CORONER'S INQUEST.

Coroner O. W. Koch, of Des Peres, Mo., who was notified of the finding of the body, went to the spot and held an inquest.

He heard only four witnesses, who were on the scene at the time and who had discovered the body and the clothes.

He returned a verdict that McCann came to his death through foul play at the hands of persons unknown to the coroner.

The inquest will probably be reopened Monday.

After the inquest was held the hole was dug and the body placed in it.

It was in such a condition that it could not be removed.

In view, however, of the necessity of the proof of the actual identity of the dead man, the probabilities are that the body will have to be disinterred.

A "TICKET-OF-LEAVE" MAN.

[By cable to the World.]

LONDON, *June 28.*—Chief Inspector Jefferson, of Scotland Yard, when notified of the arrest in St. Louis, Mo., U. S. A., of Seymour Barrington, said:

"When Barrington was under arrest in St. Louis in February last, we supplied photographs to Chief of Police Murphy, of Newark, N. J., showing that the bogus nobleman was undoubtedly the famous English criminal Barton alias Burgoyne.

"This man served terms in Pentonville, Dartmoor, and Portland prisons.

"We supplied photographs to the New Jersey police chief because, I believe, he was working up evidence in a supposed bigamy case at the time.

"The criminal investigation department here heard nothing more concerning the prisoner in America until now.

251 "The St. Louis police did not communicate with us concerning him.

"From photographs sent us at the time, however, I have never doubted but that the St. Louis Barrington and the Brighton Barton are one and the same man.

"Barton was last arrested at Brighton for burglary.

"This was in 1881.

"He was convicted at the Sussex Assizes and sentenced to twenty years' imprisonment.

"He served his term less his good conduct 'ticket-of-leave' allowance.

"As far as I know he is not wanted in England on any charge."

BARRINGTON'S RECORD IN ST. LOUIS.

December 26, 1902: Arrived in St. Louis.

December 27: Rented room at Elliott home.

January 7, 1903: Met Miss Grace Wilhelmina Cochrane, of Kansas City, Kan.

January 13, 1903: Engagement announced.

January 22: Married.

January 27: Discovery made that he was bogus.

February 1: Assaulted by James F. Cochrane, brother of the bride.

February 5: Fined $500 by Judge Tracy and ordered to workhouse for six months.

April 10: Order issued by Mayor Wells releasing him from workhouse.

April 11: Released.

April 12: Entered saloon business.

May 30: Retired from saloon business.

June 25: Arrested on suspicion of knowing something of James McCann's disappearance.

June 26: Released.

252 June 27: Rearrested on finding McCann's body in quarry near Bonfils, St. Louis County.

Q. Now, Mr. Altheimer, turn to page 30 of this scrapbook. There is a newspaper clipping of several columns; you may state where that came from.

A. That is from the St. Louis World, a daily newspaper published in the city of St. Louis.

Q. This is part of one of the papers that was circulated, is it not?
A. Yes, sir; in reference to this case.
Mr. GROVER. We offer that in evidence.
(Page 30 is in words and figures as follows:)

Extra! The St. Louis World. The official paper of the city of St. Louis.

All the news of the day told briefly.

St. Louis, Mo., Sunday, June 28, 1903.

LORD FREDERICK SEYMOUR BARRINGTON IS THE CRUEL AND BLOODY MURDERER OF TURFMAN JAMES P. M'CANN.

The ticket-of-leave man was ready to leave St. Louis with his dead friend's jewelry and diamonds when captured by the detectives—All sorts of evidence discovered and proof positive of Barrington's guilt has been secured—The great English criminal takes his arrest with wonderful coolness and denies all knowledge of the fearful crime—He killed McCann, stripped the dead and bloody body to the skin, carried it for nearly a quarter of a mile, and threw it into a deserted quarry.

A week ago last Thursday, in St. Louis County, Lord Barrington murdered his friend, James P. McCann.

After murdering him he stripped him of his clothing and jewelry and threw the body into a deserted quarry.

Barrington was arrested yesterday afternoon at the Leland Hotel with Mrs. McCann.

He was taken to the mounted station.

He was brought from there at 9 o'clock last night to the Four Courts.

253 He was at once taken into Desmond's office and questioned.

While this questioning was going on the reporters were barred.

While Barrington was being questioned McCann's jewelry was found in the patrol wagon in which Barrington had hidden it under the seat.

At about the same time Barrington's trunk was found at the Union Station.

It contained McCann's cane and revolver.

Several persons have identified Barrington as the man who got off at Bonfils with McCann.

Barrington admits going out to Bonfils with McCann, but says he knows nothing about his death.

At 12.30 this morning, after having sweated Barrington for three hours and a half, Chief Desmond gave the task up as a bad job and locked him up in the holdover.

Asked how he came in possession of McCann's cane, he said that he had taken it away from McCann in the scuffle.

It was found that Barrington the day after the murder had cashed

a ticket at the fair grounds for $800, a ticket which McCann had purchased from a bookmaker the day before.

This and all sorts of incriminating evidence was found against the man.

Barrington positively refused to make a statement to the reporters, and whenever one of them appeared in Desmond's office he closed up like a clam and refused to continue the conversation with Desmond.

A 38-caliber revolver was found in Barrington's trunk.

The cartridges found in the county will fit it. A box of cartridges was also found with the revolver, which showed that Barrington kept plenty of ammunition on hand.

254 LATEST DEVELOPMENTS.

Chiefs Kiely and Desmond subjected Barrington to a merciless sweating, lasting from 9 p. m. Saturday until nearly 1 o'clock this morning.

While the sweating was progressing the startling news reached the Four Courts that McCann's gold watch and valuable jewelry, consisting of a large diamond ring, a heavy gold chain, and a diamond locket had been discovered under the driver's seat of the patrol wagon used to convey Barrington from the mounted district police station to the Four Courts.

Barrington had undoubtedly been in possession of the jewelry and had succeeded in concealing it from the officers at the mounted district.

Barrington throughout all his severe sweating, stuck to his story of the Suburban Park incident of the two women, the two men, and the assault.

He made, however, some additions and alterations to it which the police think are very incriminating.

He said that McCann and he had quarreled while in the park and that McCann had struck him with a heavy cane which he was carrying.

He said that he wrestled with McCann and succeeded in getting hold of the cane, which he afterwards retained in his possession.

He introduced another melodramatic feature to his previous story by stating that when he arrived on the scene of the fracas between McCann and the two mysterious men he found that McCann had severely stabbed the young woman with whom he entered the woods.

Barrington claimed that he got the blood on his handkerchief in attempting to stanch the bleeding caused to the woman by McCann's stab.

He says that realizing that the two men would follow McCann with a view to obtaining vengeance, he persuaded his friend to ac-
255 company him to Bonfils station, where he said he left him unharmed.

He said that he was entirely unable to account for McCann's death, as he was in good health when last he saw him.

Another startling development occurred when Detectives Greely and Finan discovered Barrington's trunk at the Union Station.

It was brought there early in the morning by a negro named Morris, who, when located by the police, stated that Barrington had given him the trunk early in the afternoon, with instructions to take it to the Union Station, but to tell no one anything about it.

Barrington paid Morris $1 for his services.

The trunk was then taken to the Four Courts and opened.

In addition to other articles of clothing, the slouch hat worn by Barrington on the night of the murder was found.

The police also discovered McCann's cane, a revolver, and a box of cartridges.

These cartridges were identical in make and size with the four found in McCann's pocketbook earlier in the afternoon.

When leaving Chief Desmond's room, Barrington startled those present by asking Chief Desmond in a surprised tone of voice, "Am I under arrest, Chief?"

Mr. Desmond told him that he was, and he was escorted to his cell.

Late last night, by request of the St. Louis authorities, McCann's body was disinterred and taken to Clayton, where the inquest on it will be resumed to-morrow morning.

Early this morning Chief Desmond, with several of his men, will leave for the scene of the murder.

The quarry pond will be dragged, and every effort made to find McCann's clothes.

The dead man, the police have discovered, was well fixed financially.

256 He was forty-six years of age, and was married to Miss Jessie Callaway, in Windsor, Ontario, four years ago.

According to neighbors, their married life was of the happiest possible character.

McCann recently purchased the Leland Hotel and all the furniture therein and presented it to his wife, who is sixteen years his junior.

HE ASKED FOR A TOWEL.

Barrington caused wonder by his remarkable coolness while at the mounted district station.

Shortly before he was removed to the Four Courts he called the stationkeeper: "Say, old fellow, could you give me a towel and some soap? I'd like to take a sponge bath, as I feel quite dirty," he said.

Barrington was given soap and towel and allowed to wash himself.

IS MRS. M'CANN GUILTY?

There is strong evidence to connect Mrs. McCann with the crime. She may not have had real knowledge of the fearful act, but it

looks as though she cared little for the good name of her husband, and was worrying very little over his mysterious disappearance.

During the week Detective Keeley, one of the best men on the St. Louis force, says that on two occasions he saw Mrs. McCann with Barrington.

On the first of these occasions they were parading Broadway together, looking well dressed and satisfied.

On the next occasion he saw them together in Leland's drug store seated at a table eating ice cream.

The dead body of James McCann, the well-known St. Louis turfman, was found in a quarry in St. Louis County yesterday morning.

McCann left his home on the night of Thursday, June 18.

Lieutenant-Colonel Frederick Seymour Barrington, of London, England, is in the custody of the St. Louis police. 257

He is believed to have either murdered McCann or to have been responsible for his death in some way.

Saturday afternoon J. B. C. Lucas, president of the St. Louis, St. Charles and Western Railroad, telephoned to the police of the mounted district that the nude body of a man had been found in a stone quarry 200 feet south of the tracks of the electric line at Bonfils Station, in St. Louis County.

Immediately Detective Gratiot Cabanne and mounted officers Kirk and Ball set out for the point named.

FINDING OF THE BODY.

On their arrival the body of McCann was found.

It was resting head downward in the water, and the face and chest were so badly decomposed that without the post-mortem it was impossible to tell whether the man had been beaten to death, shot to death, strangled, or drowned.

One of his feet and all of his fingers had been eaten away by the fish in the pond.

MRS. M'CANN'S QUEER CONDUCT.

Immediately after finding the body Detective Cabanne and his companions hurried to Mrs. McCann's residence, carrying with them the dead man's shoes, found in the woods a quarter of a mile from where the body was located, and a pocketbook containing four cartridges.

It was thought by the officers that the body was that of McCann, and so the shoes and pocketbook were taken by Detective Cabanne and another officer to his residence.

On the way to town and near Wellston they met Mrs. McCann in the custody of police officers, who were taking her out to identify her husband's remains.

She went into hysterics after having identified the pocketbook and shoes, and while she was crying and wringing her hands she was

asked to continue out into the country and identify her husband's remains.

258 She refused to do this, however, and was so determined in her attitude that the detectives released her in disgust and told her to go home.

BARRINGTON'S ARREST.

She boarded the first car east and left the detectives looking after her and wondering what kind of a woman she could be.

Cabanne suspecting something, took his two men and, boarding the next car, followed Mrs. McCann to town.

As Cabanne and his partners got off the Franklin avenue car directly opposite the Leland Hotel, 2902 Franklin avenue, the residence of the McCanns, Cabanne saw Lord Barrington peeping from behind a curtain.

Immediately Cabanne ran around the back way, jumped over the fence, and ordered his two assistants to guard the front.

The detectives then entered the house from both sides and caught Barrington in the center of the hallway, where he stood like a man dazed.

He made no resistence, but asked what they wanted and, when informed, accompanied them readily. He did not appear at all excited or worked up, but deported himself as quietly and easily as he has always done since his advent in St. Louis.

Cabanne took Barrington to the mounted station.

OTHER ARRESTS.

When Chief Desmond heard of the murder, he sent Detective Greely out to find Barrington.

Greely found on his arrival at the Leland that Barrington had been arrested, and he took Mrs. McCann and her sister, Mayme Evans, under his wing and escorted them to the Four Courts.

A white man who gave his name as Thomas Brown, and who was acting in a suspicious manner, and a negro porter named Charles Morrison were also arrested and taken with the women to the Four Courts.

TRIED TO HIDE PICTURES.

259 When Greely arrested Mrs. McCann he was standing in a position where he saw Mrs. McCann take two pictures and try to hide them behind a mantelpiece.

At the same time he saw Miss Evans empty her pocketbook and place the book under her bedspread.

When Greely reached the Four Courts he told of the acts of Mrs. McCann and her sister.

Desmond sent a detective out, and behind the mantelpiece tintypes

of Barrington and McCann, taken at the Suburban the night of the murder, were found, as well as Miss Evans' empty pocketbook.

When asked later why she hid the tintypes Mrs. McCann said it was the only picture she had of her husband and she wanted to keep it. Miss Evans said she hid her pocketbook as it was an old friend and she wanted to keep it.

THE STORY OF THE CRIME.

On last Thursday night Barrington was arrested on suspicion of being responsible for the disappearance of McCann.

Back of his arrest at the time was a most extraordinary story.

For some four or five weeks past Barrington has been boarding with McCann and his wife at 2902 Franklin avenue.

He became acquainted with McCann while he (Barrington) was manager of a saloon at Broadway and Chestnut streets.

On the night of Friday, June 19, just after supper, Barrington and McCann went out, ostensibly to purchase some medicine for Mrs. McCann, who was feeling unwell, at a neighboring drug store.

M'CANN NEVER RETURNED.

McCann never returned, but Barrington did so at 8 o'clock Saturday morning, June 20.

He returned with two black eyes, his clothes badly torn and bespattered with blood and mud and with a pocket handkerchief saturated with blood.

260 He told Mrs. McCann an extraordinary story.

He said that he and McCann had visited Suburban Park together.

While taking in the entertainment they were approached by two men and two young women, with all of whom McCann seemed to be well acquainted.

The newcomers sat with Barrington and McCann, and the latter engaged one of the young women in conversation, which after a while sank into whispers.

Following the conversation, McCann and the young woman to whom he had been talking arose and left the park.

The two young men followed, leaving the second young woman behind in the park alone.

After getting out of the park the three men heard a woman's screams coming from the woods west of the park.

The two young men rushed forward, with Barrington bringing up the rear.

According to Barrington's story, when he reached the scene of the disturbance, he found his friend McCann on the ground with the two young men standing over him beating him unmercifully with sticks.

THE WOMAN SCREAMED.

The young woman was standing close by, still screaming. Barrington rushed to his friend's assistance, with the result that the young men turned and left him unconscious.

On partially recovering his senses, about ten minutes later, McCann, the two young men, and the young woman were standing over him.

McCann, he says, asked him if he had any money, and Barrington gave him $27.50, which he thought was all he had with him.

McCann gave part of this money to one of the young men, who went off and returned about fifty minutes later with a four-seated carriage.

McCann bid Barrington good-by, saying he was going away with the girl.

261 According to Barrington, McCann asked him to settle certain personal debts, saying he was about to leave the city.

McCann and the girl, accompanied by the two young men, entered the vehicle and drove off in an easterly direction.

THE LAST OF M'CANN.

This was, says Barrington, the last he saw of his friend McCann.

Shortly after this he lost consciousness again and remained recumbent on the ground in the woods until 6 o'clock Saturday morning.

He then walked to the McCann home, a long distance, and told Mrs. McCann his story.

She accepted it in good faith until Monday last, when a note was received by Barrington, supposed to be from McCann, asking him to tell McCann's wife to send him $300 to Centralia, Ill.

On Wednesday Mrs. McCann, through Barrington, received word to the effect that her husband did not need the money.

At this Mrs. McCann became suspicious of the whole affair and went to see her lawyer, A. C. Davis, in the Roe Building, who advised her to consult Chief Desmond.

She called on the chief, accompanied by her lawyer, Thursday afternoon, and, on hearing the strange story, Detectives Schmidt and James were detailed on the case.

BARRINGTON'S FIRST ARREST.

They found Barrington on the street at Garrison and Franklin avenues about 6 p. m. last Thursday and arrested him.

When brought to the Four Courts he told Chief Desmond the same story that he had told Mrs. McCann.

Chief Desmond, determined to get to the bottom of the matter, sent Detectives Cordell, Schmidt, and James with Barrington to the scene of the assault late Thursday night.

When they arrived there Barrington described the affray, with full details.

262 The men were accompanied to the scene by a World reporter. Barringon, after going over the lonesome route described the assault and how he stood over the prostrate body of McCann and protected him until he was knocked senseless with a blow on the jaw.

After the carriage arrived, Barrington claims, McCann came to him and asked him to get into the cariage and go away with him, but he refused on the ground that he had been treated too roughly.

Barrington described how he was kicked into a ditch while lying on the ground dazed.

After being taken over the ground twice, Barrington was walked over the route supposed to have been taken by the party after leaving the scene of the battle.

Later he was placed on an Easton avenue car with three detectives and taken to the Four Courts.

Barrington remained in the custody of the police until last Friday afternoon when, nothing having been heard of McCann, and nothing discovered to implicate Barrington in any wrong doing, he was released from custody.

When first arrested he seemed indignant, but later took it calmly, and stated that he knew McCann would turn up well in a few days.

BARRINGTON'S CAREER HERE.

Barrington's career in this city has been an extraordinary one.

Coming here early in December last, he represented himself to be a lieutenant-colonel in the Brittish army, and claimed that he was in St. Louis as special commissioner from the English Government to the Louisiana Purchase Exposition.

He was cordially received by the World's Fair authorities, shown over the site, and extended every courtesy.

Upon his arrival here he put up at the Southern and other first-class hotels.

263 After a while, however, he took up his residence at the fashionable boarding house of Mrs. R. R. Elliott, at 4368 West Belle place.

Here, it is said, that he represented himself to be Lord Seymour Barrington, of Melrose Castle, Brighton, Sussex, England.

Mrs. Elliott, apparently feeling that an English lord would make a desirable addition to her family, wrote to her younger sister, Miss Wilhelmina Grace Cochrane, then in Kansas City, Mo., to come on here for a visit.

Miss Cochrane came on, and, it appears, was introduced to Barrington as the daughter of a wealthy Kansas City pork packer, although it is not in evidence that she was of an especially wealthy family.

Miss Cochrane was a good looking young woman, and Barrington laid swift and determined siege to her heart and hand.

He was entirely successful in his suit and won, at least, the hand of the fair Kansas Cityan after a two weeks' acquaintance.

They were married at the home of the bride's sister on January 22nd.

The marriage license, as issued by Recorder of Deeds Paul C. Young, read, "Lieutenant-Colonel F. Seymour Barrington, of the Horse Guards, London, S. W. England, and Wilhelmina Grace Cochrane, of Kansas City, Mo."

On the Sunday following the wedding the St. Louis newspapers printed long accounts of the romantic marriage, together with pictures of the bride and groom.

Another feature of the newspaper accounts was a large illustration of Melrose Castle, said to be the handsomest home in all England.

This, the stories had it, was the property of Colonel Barrington, and he gave it to his young wife as a wedding present. Outside newspapers copied the story.

The bride's brother, James F. Cochrane, of Kansas City, read
264 these stories, and suspecting that Barrington was not all he claimed to be, came on here.

He questioned the bridegroom closely and was not satisfied with his answers.

A quarrel ensued, and the men went out on the front porch and resorted to fisticuffs.

Barrington is said to have gotten the worst of the encounter.

Police officers Reeves and Turner heard the disturbance and, going to the scene, arrested both men.

Cochrane was subsequently released, but Barrington was held, and a charge of disturbing the peace placed against him.

This was on Sunday, February 1.

SENT TO THE WORKHOUSE.

Barrington was unable to give bond, and after languishing in the Carr street holdover for two days was, on February 3, sentenced by Judge Daniel O'Connell Tracy to pay a fine of $500.

This was the maximum penalty allowed by law for the offense with which Barrington was charged, and in imposing it Judge Tracy delivered a very scathing address to the defendant.

Barrington being without friends was taken to the workhouse and put to work in the stone quarry.

After being there a few days, dispatches were received from the East, stating that Barrington was the notorious English criminal named Barton, alias Burgoyne.

It was said that he had served several terms in English prisons, and that he was wanted in Philadelphia, New York, and other cities on charges of bigamy and other serious crimes.

Pictures claiming to show that Burgoyne and Barrington were identical were published.

Barrington behaved well while in the workhouse, and treated all the bad stories concerning him with derision.

"I am not Burgoyne nor Barton—bring on my accusers," was his answer to all the incriminating assertions.

Wealthy persons, feeling that Barrington was being treated
265 too harshly, interested themselves in his behalf.

One of these, Fred H. Gerhart, a well-known real estate man, engaged Colonel John I. Martin to take up Barrington's case.

He gave him carte blanche as to expense.

Colonel Martin, on behalf of Barrington, commenced suit in the Jackson County courts against young Cochrane, charging him with assault and defamation of character.

He asked $100,000 damages.

This suit is still pending.

As a result of it a commissioner was appointed to take evidence.

Barrington, his wife, and others testified.

PARDONED BY MAYOR.

A copy of his testimony, which clearly showed that Barrington had not been the aggresor in the case, was laid before Mayor Rolla Wells.

The mayor, after perusing the transcript of the evidence, issued a pardon, and as a result of this Barrington was released April 11.

Friends supplied him with good clothes and he was installed by J. W. S. Gillespie, proprietor of the Hyde Park buffet, as manager of that establishment.

The buffet in question is located at the northeast corner of Broadway and Chestnut streets.

Large signs reading "Lord Barrington's Saloon," were placed over the doors and windows, and for several weeks a rushing business was done.

Barrington proved both an affable, gentlemanly fellow, and a great drawing card.

Toward the end of May, however, the "English Lord's" drawing abilities appear to have given out, and he lost his position.

It is said that he then became a life insurance agent.
266 Nothing has been heard of him since leaving the saloon management until last Thursday night's episode.

Barrington's wife refused to become reconciled to him and is suing for divorce.

Barrington has always claimed tha he was guilty of no wrongdoing toward her.

He says he married her because he loved her, and says further that he never claimed to either her or her sister that he was a lord.

He says that his title, Lord Barrington, came about as the result of an after-dinner jest.

DAMAGING EVIDENCE.

Charles Morrison, the negro porter at the Leland, was questioned by Chief Desmond last night.

He tells a story that almost proves the guilt of Barrington.

"It was on Friday morning a week ago," said Charles Morrison to the World reporter last night, "that Barrington came into the hotel.

"His clothes were all soiled and bloody, his face was scratched, and he looked as though he might have been in a wrestling match.

"'Where's McCann?' I said to him. 'Why didn't he come back with you?'

"'McCann,' said Barrington, 'is out of the city, and I don't care if he never comes back.'

"'But where did you leave him?' I said.

"'Don't bother me,' said Barrington; 'I don't want anyone to see me in these clothes.'

"Then he took the clothes off and gave them to me and told me to clean them. I took a brush and started to brush the dust out of them and get them as clean as possible.

"Barrington went into the house, but in a little while came out again. As soon as he came back I asked him where McCann was.

267 "This time he said he didn't know; that he guessed he had left for good.

"Then Barrington looked wicked and said:

"'I think he's left here for good, but if he should ever come back here I'll kill the s o b .'

"I asked Barrington why he talked that way about McCann, and he said:

"'The s o b tried to give me the worst of it, but I think I fooled him.'

"'Well, that's all right,' I said, 'but is McCann coming back?'

"'I don't know,' Barrington replied surlily, and then he walked away.

"I kept looking at him. I thought all the time it was awfully funny that there were no cuts on the back of his head, while the back of his coat, which he had given me to clean, was all covered with blood. I couldn't see how he had ever got that blood on the back of his coat, and I kept a wondering about it.

"While I was thinking, Mrs. McCann came in, and, seeing Barrington, asked him where McCann was. Barrington told her that he and McCann had had some trouble out in the country, and that McCann said he wouldn't return for a few days.

"Then Mrs. McCann questioned me about the blood on Barrington's clothes. I told her the clothes were awful bloody, but she didn't comment on that. I brushed the clothes as well as I could and then hung them out on the line to dry. Barrington came out and looked at them later in the day, and said:

"'You didn't get all the blood off; use some turpentine, and clean all the blood off, and sell them to some second-hand man.'

"Later Mrs. McCann came out and saw the clothes still hanging on the line, and told Mrs. Morrison, my wife, to put them away, so Barrington would get them later. The clothes were put away
268 in the box and were there until detectives found them to-day."

THE MURDER IN BRIEF.

As the World goes to press these facts about the murder of James P. McCann by Lord Barrington have been gleaned:

Barrington killed McCann near Bonfils.

He stripped the body of its clothing, diamonds, and jewelry.

Then he carried the bloody body on his back to a deserted quarry and threw it in.

McCann's diamonds and jewelry were found on Barrington.

In Barrington's trunk were found McCann's walking cane and revolver.

Conductors and motormen identify Barrington as the man who accompanied McCann to Bonfils on the night of the murder.

The hotel porter tells of Barrington's return after the murder and his queer conduct.

The hotel porter tells how Barrington cursed McCann and called him names and prophesied that he would never come back.

The body of McCann buried, after a coroner's inquest, then disinterred and taken to Clayton, where a post mortem will be held Monday.

At daylight this morning the police will drag the quarry pond near Bonfils and try to find the remainder of McCann's clothes.

Barrington laughed when arrested and acts the part of the injured innocent, and tells all sorts of stories about his connection with the crime.

Mrs. McCann ate ice cream with Barrington while her husband lay dead in the quarry.

She refused to identify her husband's remains.

Becomes hysterical when questioned and will say nothing.

All facts prove this to be the cruelest and bloodiest murder ever committed in or near St. Louis.

269 Q. On page 36 of this scrap book, Mr. Altheimer, what do you find?

A. I find a newspaper clipping from the St. Louis World, of June 30—a clipping from a newspaper published in the city of St. Louis to the effect "Mrs. Jessie McCann not the wife of the man murdered by 'Lord' Barrington."

Mr. GROVER. I will offer this in evidence.

(Page 36 is, in words and figures, as follows:)

MRS. JESSIE M'CANN NOT THE WIFE OF THE MAN MURDERED BY "LORD" BARRINGTON.

Startling developments in the great murder case—Woman's correct name is Leland and her husband lives in Lexington, Ky.—Accused interviewed by World reporter last night denied his previous admissions—Insists that he is innocent—Important witnesses discovered—Mitchell, his supposed accomplice, released from custody—May drag the quarry to-day—Connected with the brutal murder of old John Moag.

Monday's Barrington case developments:

Discovery made that "Jessie McCann" was not the murdered man's wife.

McCann's brother-in-law says she is Jessie Leland, of Lexington, Ky.

Barrington talks with World reporter.

Denies that he ever confessed to the crime.

Insists that he is innocent.

Takes matter coolly and was sleeping soundly at midnight.

Asa E. Mitchell, alleged accomplice of Barrington, released from custody.

Two new and important witnesses against Englishman discovered.

Quarry pond not yet dragged.

Will be dragged to-day.

Barrington positively identified as Barton, the famous English criminal.

270 Indications are that he murdered John Moag, the South Fourth street cigar dealer.

The most startling feature of Monday's developments in the Barrington-McCann case was the discovery that the woman living with McCann at 2901 Franklin avenue, and who claimed to be his wife, bore no such relation to him.

Ben T. Hume, a well-known citizen of Lexington, Ky., was in the city yesterday to arrange for the shipment to that town of McCann's remains.

Hume is a brother-in-law of the dead man.

"The woman who gives her name as Jessie McCann, and who claims to be the wife of my murdered brother-in-law, is nothing of the sort," said Hume to the World reporter last night. "Her correct name is Jessie Leland.

"Her husband lives in Lexington, and I am quite positive was never divorced from the woman.

"McCann became acquainted with her while living in Lexington, and came with her to this city.

"I notice that the hotel operated by the alleged Mrs. McCann at 2901 Franklin avenue is called the Leland.

"The woman undoubtedly called the hotel this because it was her correct name.

"Mrs. Leland's claim that she married my brother-in-law in Windsor, Ontario, is not true.

"She was never married to him."

BARRINGTON STILL LYING.

World representative saw the accused man, Barrington, in his cell in the Clayton jail last night.

Barrington was not disposed to be talkative, and the only statement that he would make was as follows:

"I see that the afternoon papers quote me as saying that I murdered McCann because he treated his wife brutally.

"This is a damned lie.

271 "I never said anything of the sort.

"The man that would write such stuff as that would not hesitate to send a man to the gallows without a trial.

"You can say for me positively that I have made no confession to Chief Desmond nor to anyone else.

"I did not murder McCann.

"I will talk freely when the right time comes, but at present I must refuse to give my version of McCann's death."

Barrington seemed in much better spirits yesterday than on Sunday.

He ate heartily and did not behave at all like a man resting in the shadow of the gallows.

Large crowds went out to Clayton hoping to catch a glimpse of the famous criminal, but as a result of Sheriff Hencken's instructions, few were permitted to do so.

Barrington retired shortly after nightfall.

There was no light in his cell and the sheriff declined to allow him to have a candle.

At midnight he was sleeping soundly.

BARRINGTON WENT TO CHURCH.

The police yesterday afternoon got two more good witnesses against Barrington.

Oliver Goodwin, a negro porter living at 221 Morgan street and employed in a barber shop at 521 Chestnut street, stated that on Friday, June 19, the day after Barrington murdered McCann, Barrington came into the barber shop, and after being shaved asked Goodwin to button his collar, as his hand was very sore.

The thumb of Barrington's right hand was badly bruised and looked as if it had been mashed with a blunt instrument.

The other witness was Cecil Rollins, of 5898 North Market street, who is employed in a tailor shop in the Mermod-Jaccard Building.

He stated that on the day after Barrington was released from the holdover he came to the store and asked him if he had
272 heard of his being arrested for murder.

Rollins stated that he had often delivered clothes for Barrington and that on one occasion he dined in Barrington's room, and that he also went to church with him.

Both these boys will be subpoenaed as witnesses when the trial is called in Clayton.

MITCHELL IS RELEASED.

Asa E. Mitchell, who was arrested Sunday night by Detectives Woodling and Crimmins, suspected of complicity in the case, was released yesterday afternoon after signing a long statement acknowledging a confession made to Chief of Detectives Desmond.

Mitchell admitted that he wrote letters to and telephoned Mrs. McCann that her husband was all right several days after his disappearance.

Mitchell spent all Monday morning in the holdover, and when taken to Chief of Detectives Desmond's office he made his statement and was released.

Mitchell, who is a representative of a mineral-water company, has his office in the Mermod-Jaccard building and lives in New York.

He told Chief of Detectives Desmond that he was going to return to his home, but that he would return whenever wanted.

POND NOT YET DRAGGED.

The quarry pond at Bonfils, where the clothes of the murdered man, McCann, are supposed to be, was not dragged yesterday, but a searching party will be sent out this morning.

Yesterday was a busy day at the Clayton courts, and the deputy sheriffs did not have time to go to Bonfils to drag the pond.

It is supposed that some sensational developments will be unearthed when the clothing of the murdered man is found.

In so far as Barrington's guilt was concerned, there were some doubting Thomases on Sunday.

By Monday night there were none.

273 As each hour passes fresh evidence accumulates.

And as the World goes to press this morning there is not one missing link in the chain of evidence that is to lead Barrington to the scaffold.

It would now appear that this bogus English lord is a fiend who for many years has made murder and robbery his business.

From all the evidence at hand he played no favorites.

He robbed his wives as well as his friends and murdered them, too.

Here in St. Louis we have evidence of only one murder in which Barrington played the part of the assassin.

But there are many facts connected with his life that now that his true nature is known would indicate that he has often wielded the knife or revolver and committed murder.

He was stripped to the skin on Sunday at the Four Courts and on him were found all the scars and moles on his back and hips needed to establish his identity and prove that he was none other than George Barton, alias Burgoyne, alias Sydenham, burglar, confidence man, thief, jailbird, and all around crook.

This man Barton committed arson when he was ten years of age, and he has been a criminal ever since then.

He is now forty-three years of age.

Of his forty-three years of life we have record that he spent more than half of his lifetime in English or American prisons.

That he made murder a business is proven by his actions in two distinct and separate cases.

Lieutenant Robey of the British army was murdered in England in 1881.

George Barton, a private soldier of his company, was his valet.

274 Lieutenant Robey had just received a large allowance of money from his estate, and it was missing after his murder.

Barton lived at the lieutenant's quarters and knew of the money. He had been allowed many privileges not usually allowed servants on account of his polished manners, his place being almost that of a companion to his superior.

Barton won his place as valet and companion to the officer through his ready conversation, refined manner, and evidence of education.

Barton found the body of the murdered officer and gave the alarm.

Suspicion pointed to Barton, but he was never arrested. No one else was under suspicion.

When Mrs. Celeste Miller Barton, wife of Barton, accused him of murdering Lieutenant Robey he only sneered and did not deny the charge.

Take the above case and place it beside that of the murder of McCann and you are forced to admit that the story of both murders sound fearfully and wonderfully alike.

All the facts in the murder of McCann show that Barrington planned the crime carefully.

Several days before the cruel butchery of his friend he went to Bonfils and looked over the ground.

He went over it once, twice, three times—there is evidence of that—and there is no telling how often beside he viewed the place when no one was looking.

His coolness on his way to the place of murder, his sitting in the rear of the car where he could watch his intended victim as he went to his doom, his silence on the way, all go to prove that he knew his business so far as luring men to their doom is concerned, and his

finish of McCann, a far more powerful man than he, shows

275 that he knew how to kill and how to destroy. Despite the superior weight and strength of McCann all the evidence goes to show that he was an easy victim to the accomplished assassin.

McCann was chopped with knife and razor, shot through the jaw and head, but his assailant escaped with only a slight scratch or two.

That McCann was helpless in the fiend's hands was proven by the cries which men and women heard that night, and one of which sounded like:

"Please don't shoot me!"

Barrington's going over the ground and his handling of his victim proves that he was one who planned his campaigns of murder and knew how to carry them out.

Had it not been for the fact that Barrington had become famous, or infamous, in St. Louis long before he killed McCann, he might have gotten away with that crime, left here, and in a little while the fearful murder would have been forgotten and the arch fiend would have been free to follow his career of murder elsewhere.

The killing of Lieutenant Robey and James P. McCann have been fastened on Barrington, but as he made a business of murder who knows how many more he may have killed?

Did Barrington murder John Moog?

These were questions asked by more than one yesterday.

Moog was an old man who, until last Christmas eve, kept a little cigar store opposite the Southern Hotel.

On that night he was murdered and a little box containing $1,600, the savings of his lifetime, was carried away.

Barrington was a guest at the Southern Hotel that night.

He had money then and he did not lack for funds for some time after.

Could Barrington have crossed from the Southern Hotel,
276 that Christmas eve, killed John Moog, and then returned to his room in the hotel with Moog's savings?

This is a strange question now, but as Barrington made a business of murder who knows but that old John Moog was also one of his victims.

Judging only by the cruel murders of Robey and McCann, there is no telling how many other men and women this businesslike assassin got away with.

Yesterday when he was in the sweat box and plied with questions concerning his cowardly deed the archfiend tried to throw the reason for his act on the widow of the man he had murdered.

Pushed hard and asked outright:

"Why did you kill McCann?" he whined back, "I couldn't stand to see him beat her——"

There was a pause. Barrington realized that he was saying too much.

"For God's sake don't let them lynch me. I want to die a legal death—if I've got to die."

Sentence by sentence was dragged from the lips of the murderer.

"I couldn't stand to see him beat her," he reiterated in defense of the awful accusation without actually admitting the murder of

McCann. He was more solicitous about Mrs. McCann's welfare than he was about the fate in store for him.

"She was such a lovely woman," he sighed regretfully, "such a lovely woman, and he—well, he was nothing more than a brute, and a very mean brute at that."

Strange things for a man to say about one who had proven a friend and benefactor.

"If it hadn't been for me he would have killed that woman two nights before he was found dead," Barrington added. "I got
277 to the house just in time to keep him from shooting her, and he said that he would even up with me for the interference. He told me that if I ever butted in again he would put my light out, and he meant the words he said."

"What was the fight about?" Barrington was asked. "Was jealousy at the bottom?"

"I don't care to say," he answered.

"How many times did Mrs. McCann come to the Hyde Park buffet and call you out?"

"I don't want to answer that. All I want to say is that she was a lovely woman."

"Were you ever out at Bonfils before the night of the crime?"

"Yes; once."

"When?"

"The day before."

"What did you go out for?"

"At the solicitation of McCann, who had business there."

"What was the nature of the business?"

"I won't say."

Mrs. McCann was furious when she heard what Barrington had said about her and her husband.

"There is nothing about my past," she said, "by which he could have any hold over me.

"All the man ever knew of us is that we were his benefactors, especially my husband.

"Jim was one of your generous-hearted, open-handed men. A hard-luck tale would always affect him, and he gave to the unfortunate on the slightest provocation.

"Barrington knew of this and did not fail to avail himself of it at every opportunity.

"We had heard something of his past record, but my husband said he did not believe it all. He thought Barrington was an
278 under dog who had been given the worst of it, and in his generosity he tried to help him.

"Six weeks ago we moved into the Leland Hotel, at 2901 Franklin street, and fitted it up with new furnishings. Barrington was received into our place shortly after we took possession.

"He was a very entertaining man, and we grew to believe his stories. We are not the first the man has deceived.

"My husband gave him money for his personal expenses, clothed him, and when they went out together Jim paid the bills.

"Barrington learned a great deal about our affairs, and was aware of what money Jim had. He was with him frequently when my husband played the races, and executed a number of commissions in a small way for Jim.

"My husband told me recently that Barrington said that he had a pension or annuity of $1,700 coming from relatives in England. He also expected to obtain damages from the suit he had instituted against his brother-in-law, James Cochrane, of Kansas City, for the assault at the Elliott home on West Belle, when his pretensions to wealth and nobility were exposed.

"We believed him. Jim told me that Barrington had a plan to borrow $1,000 from a man in the country. He asked Jim to accompany him to the man's house and act as a witness to the transfer of the money and witness the signing of the papers.

"I had a headache, but was dressing in my room when Jim entered and told me that it was a mistake about my accompanying them that night. Barrington told him, he said, that he was to be the only one to accompany him that night; that my invitation was for the Thursday night following.

"Jim offered to go to the drug store to get some headache tablets before they went out to keep the engagement. He never returned.

"It is my belief that Barrington lured him into the country at Bonfils under the pretext of obtaining the $1,000 from some person who does not exist in order to carry out a fell purpose.

279 "At first, after Barrington returned, the following morning, he deceived me with stories that Jim had gotten into a scrape which, if investigated, would get him into serious trouble.

"To lull any suspicions he showed me that note he had written to himself, purporting to be from my husband. He arranged for that telephone message also in order to aid in the deception and keep the crime from being revealed.

"Finally, I decided to go to Attorney A. C. Davis and ask his aid. If Jim was in any trouble, I did not want to injure him. I loved him too well; but I became suspicious of Barrington, especially after he wanted to get $300, which, he said, was to be sent to Jim.

"I told my attorney that there was nothing in the case of which I feared; that it should be wide open. After the investigation began it wasn't long until my husband's fate was known."

DID "LORD" BARRINGTON MURDER JOHN MOOG?

Indications are that the old tobacco dealer's death should be laid at the door of the fiend incarnate.—Is Frederick George Barton, alias Frederick Seymour Barrington, alias Victor Vernon Syderham, alias Frederick Burgoyne, the murderer of John Moog?

Many people were asking themselves this question yesterday. There are many circumstances which would indicate that he is.

Barrington came to St. Louis early in December last.

He represented himself to be Lieutenant-Colonel F. Seymour Barington of the Horse Guards, the crack English regiment.

He said he was here on behalf of the British commission to the world's fair.

In this capacity he was received by David R. Francis and other officers of the exposition.

December 23 the press and publicity department of the world's fair gave out the following item:

"Among to-day's visitors was Lieutenant-Colonel Frederick
280 Seymour Barrington, of the Horse Guards, London S. W., England, official representative of the British Government.

"He was shown through the buildings by President Francis and expressed great satisfaction at the progress made and said that undoubtedly the exposition would be the greatest in history."

STAYED AT SOUTHERN HOTEL.

Barrington during the month of December was staying at the Southern Hotel.

Across the street was the little tobacco store of poor old John Moog.

Barrington, it is positively known, was often in Moog's store and became acquainted with the man.

He was in the habit of going to the store about 8.30 each evening and purchasing cigars.

Moog was 70 years old and had owned the cigar store at 108 South Fourth street for nearly twenty years.

He was of a saving disposition and had accumulated a large sum of money.

He kept this sum, said to be $1,600, in a little box behind the counter.

John Moog was murdered between the hours of 9 p. m. and midnight on Christmas eve.

He was found with his head battered in at 12.30 on Christmas.

The box with the money was gone.

No trace of it has ever been found.

The police, in looking for the murderer, confined their attention to the hoodlums in the district.

A man named Turk was arrested on another charge and made a statement to the effect that two of his companions were guilty of the Moog murder.

Few believed Turk's statement and no arrests were made as a result of it.

281 Unless all indications are wrong, the police made a mistake in looking for John Moog's murder among the hoodlum class.

Moog was a very careful old man.

It is known that he would never open his store door after closing hours unless he knew the man knocking for admittance.

He must have opened it on the night of his murder.

The door had a glass window in it.

Through this door Moog looked out.

The man he saw knocking must have been a well-dressed man or careful old John Moog would never have given him admittance.

Barrington was well dressed.

Moog would hardly have hesitated to admit the suave Englishman who had spent much money in his store.

From Moog's store to the Southern Hotel was a mere step, as it were.

Barrington could have returned to the hostelry by way of the Fourth street entrance.

His coming and going would have attracted no atention—have aroused no suspicion.

The connection between Barrington and the Moog murder is much strengthened by this fact.

Before Moog's murder Barrington had little money and owed a large board bill.

Immediately after the murder he had lots of it.

He was able to cut quite a dash in society while courting Miss Cochrane, of Kansas City, and spent money freely before and after his marriage.

In view of all these things, in view of his previous record as now known, in view of his brutal murder of his friend and benefactor, is it not reasonable to suppose that Barrington murdered John Moog in the little cigar store at 108 South Fourth street on Christmas eve last?

Especially is it reasonable in view of the fact that Barrington's room at the Southern was on the Fourth street side and
282 its window overlooked the little cigar store.

Barrington undoubtedly saw the poor old man counting his money and putting it in the little tin box.

Q. On page 38 of this scrap book, Mr. Altheimer, what do you find?

A. I find a statement or clipping from the Globe-Democrat of June 30, 1903, a newspaper published in St. Louis.

Q. That is the Globe-Democrat?

A. Yes, sir.

Mr. GROVER. We offer in evidence these three columns on the right hand side which pertain to the Barrington case.

(This offer on page 38 is in words and figures as follows:)

BARRINGTON ADMITS HE STRUCK FIRST BLOW AT THE OLD QUARRY.

Bogus lord laughs at rumors of confession and says he has no such intention—Invents new story every ten minutes and is monumental liar, the officers say—Mrs. McCann's matrimonial agency still running in Temple Building under name of "Mrs. Leland"—Noose tightens about the prisoner despite his efforts to appear jaunty—McCann's funeral today—His widow says Barrington never attempted to woo her.

"Lord" Frederick Seymour-Barrington, accused murderer of James P. McCann, related an entirely new story last evening in e

planation of why he and his alleged victim visited the stone quarry near Bonfils the night McCann lost his life.

Barrington declared that McCann was crazy from the use of morphine and whiskey on the fatal night, and that McCann induced him to accompany him to the lonely spot.

When they reached the quarry they met two other men, Barrington claims. They appeared to be awaiting McCann's and the "lord's" arrival.

"A moment later after the meeting the trouble began," said Barrington. "That's all I can say now. I don't know the names of the strangers. If I should see them again I could identify them, however. I don't know why McCann wanted to go to the place."

Barrington said McCann introduced him to the two
283 strangers. He insisted, however, that he did not hear their names. McCann frequently introduced him to people whose names he did not learn, Barrington claimed.

STRUCK FIRST BLOW.

When asked who started the trouble at the quarry Barrington replied that he thought he hit the first blow. He refused to say anything more about it, asserting that he would save the story for his defense.

The two strangers, he said, preceded him and McCann to the quarry an hour. When asked how he knew this he refused to answer, explaining that the public could not expect him to tell everything at this time.

"The people have already formed the opinion that I am guilty of McCann's death," said Barrington. "My denials will probably have no weight, but I want to tell you and everybody else that I do not know who killed him. I am absolutely innocent."

Barrington had stated that McCann was crazy from morphine and whiskey when they started for Bonfils. He says he did not want to accompany him for that reason. When asked why he had permitted a crazy man to lead him, he evaded answering.

"It will come out later," he replied.

LAUGHS AT CONFESSION REPORT.

The alleged murderer laughed at the reporters that credited him with being about ready to confess the killing.

"I had rather been dead than in my present position," he declared, "but I am not going to confess to a lie. I do not believe the body taken from the quarry is that of McCann. Mrs. McCann did not positively identify it."

When reminded that he had admitted to Chief Desmond that he believed the body was McCann's, Barrington answered that the admission was not made by him until after Mrs. McCann had said

that the body was her husband's. He had changed his opinion since. He professed to believe that McCann was still alive.
284 Barrington tells a new story almost every time he is interviewed. He is making a great reputation as a liar, the officials say.

Yesterday he denied that he had ever told McCann or Mrs. McCann that he expected to borrow money on an insurance policy from friends of his in St. Louis County.

The day before he admitted that he had told the story. His memory serves him badly. It is placing him in a position from which he will never be able to recede.

SEVERAL TIMES AT BONFILS.

When told that Mrs. Lennon, who lives near the Bonfils quarry, identified him as a man whom she had seen in the neighborhood several times before McCann disappeared, Barrington replied that the woman's story was a likely one, as he had been out there several times.

Officers Kirk and Cabanne, of the St. Louis detective force, spent two hours yesterday afternoon dragging the quarry for McCann's missing clothing. The St. Louis officers recovered nothing from the water. Near Bonfils Station, however, north of the street car track and not far from where McCann's shoes were found, they picked up a man's colored shirt cuff. It was blood stained and may lead to other developments.

The two officers also learned more of Barrington's movements the night of McCann's death. Robert Wiggins, of 6138 Suburban avenue, told them that Barrington was on a suburban car, coming from the city, and inquired of him if he thought he would reach Wellston in time to catch the 9 o'clock car on the St. Charles line. McCann was with him at the time the inquiry was made. They missed the 9 o'clock car and caught the one that followed.

It developed yesterday that Barrington has been attentive to a young woman in the De Hodiamont neighborhood. He frequently visited James Curran's saloon, near the Suburban tracks, always buying four or five bottles of beer and carrying them away
285 with him. He never drank in Curran's place.

NEW WARRANT SWORN OUT.

Dr. Otto W. Koch, coroner of St. Louis County, swore to a new warrant last evening, charging Barrington with McCann's murder. The warrant was prepared by R. L. Johnston, prosecuting attorney. The former warrant was sworn to by Mrs. McCann.

The coroner will reopen the inquest. The rehearing will be held Thursday afternoon at Clayton. Justice Campbell has set Barrington's preliminary hearing for July 8, as already stated.

Q. On page 68 of this scrapbook, Mr. Altheimer, what do you find?
A. I find a statement in reference to this case.
Q. What is it you find?
A. A newspaper clipping from the St. Louis Globe-Democrat of June 29, a paper dated and published in the city of St. Louis.
Q. This is one of the papers circulated in one of the general circulations of that day?
A. Yes, sir.
Mr. GROVER. We offer this newspaper article. There are three pictures in this article, one that purports to be a half tone of the Bertillon system in reference to Barton. The Bertillon reproduction we offer with explanation, but not the other two pictures.
(This offer on page 68 is in words and figures as follows:)

"YOU MIGHT AS WELL HANG ME NOW" (BARRINGTON)—AUTOPSY SHOWS TWO BULLETS IN M'CANN'S HEAD—WIDOW OF THE SLAIN MAN SWOONS AT HIS SIDE—WARRANT FORMALLY CHARGES BARRINGTON WITH MURDER.

Bogus "lord" sweated for two hours by Chief Desmond at the scene of the crime, breaks down, weeps, and practically admits his guilt—McCann's body reveals signs of a terrible struggle before his death—Gashes on his hands show that in defense he grasped razor, which was found near quarry—Barrington turned over to the county officials and taken to Clayton.

286 "You might as well take me out and hang me now. You have enough against me already to justify you in doing whatever you like with me."

This was Barrington's statement to Chief Desmond just as the two started for Clayton yesterday. The post-mortem examination over McCann's body has been completed and Desmond had sweated Barrington for two hours. Barrington's words were equivalent to admitting that the circumstantial evidence was as strong as it could be.

287 BARRINGTON CHARGED WITH MURDER.

In a warrant issued by Justice Isaac Campbell, of De Hodiamont, F. Seymour-Barrington is charged with the murder of McCann. The warrant was issued late last night. It was read to Barrington by Deputy Sheriff Bellairs.

Barrington made no comment on the issuance of the warrant. He had anticipated it. Justice Campbell named July 8th as the date for the preliminary examination. Barrington waived the hearing, however, and will await the action of the St. Louis County grand jury.

The warrant was issued at Clayton, Justice Campbell going there at the request of the sheriff.

IDENTIFICATION BY MRS M'CANN.

"There's the sweetest man that ever lived."

These were the words uttered by Mrs. James T. McCann yesterday afternoon as she looked upon the remains of her husband as they lay under the branches of a tall elm tree near the stone quarry into which they were thrown after murder had been committed.

As she spoke, Mrs. McCann swooned. When she revived she again looked at the body and said it was that of her husband.

The scene occurred at 4 o'clock yesterday afternoon. "Lord" F. Seymour Barrington, accused of the murder of McCann, was a witness to it. There were a hundred or more other persons present.

Barrington was the coolest man in the crowd. He stood by the side of the corpse. Not a muscle in his body seemed to quiver. He neither paled nor did he appear nervous.

Just previous to Mrs. McCann's coming, Barrington had viewed the body from every point of view. He walked about it and leaned far down over it, as if to detect resemblance to his benefactor, McCann. At last he told the officers that he was unable to identify it as that of McCann. Later, however, he admitted to Chief Desmond that he believed it was McCann's body.

288 BULLET WOUNDS IN BODY.

The day's developments revealed the manner of McCann's death. It was due to pistol-shot wounds in the head. There were two. Both bullets were recovered, and the coroner and other officials say they had been fired from a .38-caliber weapon.

The weapon found in Barrington's trunk at Union Station fired the same size cartridge. The unused cartridge found by little Martha Lang near the scene of the crime were of the same caliber.

The coroner also found three knife wounds on the head and neck. There was a shallow gash four inches long across the throat.

Another cut extended along the left jaw three inches, and there were two gashes in the left hand, between the thumb and index finger, that indicated McCann had caught hold of the blade of the knife when it was being wielded against him. Thursday a razor handle was found near the quarry.

BARRINGTON TAKEN TO CLAYTON.

Late last night the St. Louis officers gave Barrington into the custody of the sheriff of St. Louis County and he was taken to the jail at Clayton, on a charge of murder.

To Chief of Detectives Desmond, who has "sweated" him at the scene of his alleged crime for two hours, Barrington had admitted almost everything except that he killed McCann. He insisted that the crime was not his, but he said he was willing to suffer for it if necessary, but did not fear the future.

BARRINGTON'S FRIEND WHO SENT NOTE IS ARRESTED.

Detectives Woodling and Cremins last night arrested Asa E. Mitchell, of 119 South Broadway, on suspicion that he knew something about the McCann murder. Mitchell claims to be agent of the "Water of Life Company," a company, his card states, occupying room 426 Mermod & Jaccard Building.

Mitchell admitted that he was a personal friend of Barrington, and that on June 22 he wrote a note to Barrington which read:

289 "Fred: I am all right; don't send what I asked for." The note was signed "Jim." This is the note Barrington received and showed to Mrs. McCann to convince here the missing husband was out of trouble.

He also confessed that he telephoned Barrington that "I have located your man through our agent in New York." As he was at the telephone, he said, Barrington called Mrs. McCann to the phone and had Mitchell repeat the message to her. This, it is believed, was done to convey the idea to Mrs. McCann that "our man" was a detective whom Barrington had employed to look up McCann, and that he had been successful.

Mitchell was locked up and will be held for Chief of Detectives Desmond, who will "sweat" him this morning.

M'CANN'S BODY EXHUMED.

When the body of McCann was exhumed shortly after noon Sunday, a half hundred persons were there to watch the work. The grave had been dug about 200 feet from where the body was found in the quarry. The remains were in an ordinary pine box and were in a badly decomposed condition. Coroner Otto W. Koch, of St. Louis County, and Harrigan & Sheehan, undertakers, of St. Louis, had charge of the work.

The remains were laid on an improvised slab. The face was mostly gone, but it was not doubted that Mrs. McCann would be able to identify the body if she could bear the ordeal of looking at it.

Barrington, guarded by Detectives Kirk, Smith, and Cabanne and Deputy Sheriffs Bellairs and Schnecko, from Clayton, and Mrs. McCann, her sister, Mrs. Mamie Evans, of Wakeman, Ky., and two male friends reached the scene shortly before four o'clock. Barrington was at once taken to the spot where the body lay. Mrs. McCann and her sister stopped at a farmer's house near by.

When Barrington passed around the quarry he peered through the tangled vines and bushes that fringe its edge into the black

290 water below and wanted to stop. But the officers kept him moving. When they reached the side of the body Barrington walked around it several times. He scrutinized every part of it

closely. He leaned over and touched the protruding teeth with his finger. Then, straightening himself up, he remarked to the officers: "I don't believe it is McCann's body. I am anxious to know what Mrs. McCann says." Barrington's voice was steady. There was no tremor of the body.

ASKS FOR INVESTIGATION.

"I am very much interested in this case," Barrington continued. "I want it investigated thoroughly." The police say his wish will be gratified.

Barrington remained at the side of the remains until Mrs. McCann and her sister appeared to view them. Mrs. McCann was supported by J. W. Church and a young man who gave his name as Tom Brown, but who was called Tom Leonard by A. C. Davis, Mrs. McCann's attorney.

Mrs. McCann glanced quickly at the body. She did not allow her eyes to rest upon it long, but the instant they did was sufficient to convince her that it was that of her husband.

Her statement that he was "the sweetest man that ever lived" were her identifying words. Then the scene overpowered her.

Mrs. Evans also positively identified the body. With Mrs. McCann she returned to the farmer's home near the quarry.

POST-MORTEM HELD.

As soon as the identification was completed, Coroner Koch, assisted by Dr. H. T. Randle, of Clayton, began a post-mortem examination of the body. Barrington remained near by until the officers took him away. He was turned over to Chief of Police Kiely and Chief of Detectives Desmond.

Chief Desmond walked with Barrington to near a clump of young elm trees, away from the crowd, and for two hours used his splendid powers as a "sweater" of great criminals in an effort
291 to exact from the bogus lord a confession that he killed McCann.

Barrington bore the ordeal without sign of collapse for the first hour. Then it was noticed that he was becoming nervous under the rapid work of Desmond. He moved his hands nervously and insisted on turning his face away from his questioner, but Desmond compelled him to look him in the face as he talked. He noted every change of his demeanor. While the battle between the two men was on the crowd standing about heard the church bells ringing at St. Charles, two miles away.

Two hundred feet from where the two men stood the physicians were carrying on the post mortem and making discoveries not dreamed of at the time of the inquest. They first found the cuts already described. The scalp was removed. Then the top of the skull was sawed away and the physicians began probing for bullets.

Two were found. One had entered the left cheek bone and was found near the base of the brain. The other had passed through the right cheek and knocked out three of the upper teeth. Before the physicians completed their work they had completely severed the head from the body.

BARRINGTON UNCONCERNED.

When the first bullet was found an officer went to Chief Desmond with the news. Just before Barrington was ready to accompany the sheriff of St. Louis County to Clayton he several times showed signs of breaking down. Tears welled to his eyes, his voice changed, and he became exceedingly nervous, but each time he recovered himself, and the anticipated did not occur. He admitted everything right up to the time of the murder, and then declared he was absolutely innocent of the crime.

As Barrington and the officers passed around the stone quarry on their way to the street railway at Bonfils and en route to Clayton, Barrington again expressed a desire to look at the hole where McCann's body was found. He was permitted to do so, with
292 an officer holding his arms, the latter evidently taking precaution against any possible effort Barrington might make to commit suicide by throwing himself into the quarry.

Barrington walked to the edge of the quarry at the point where it is believed McCann's body was thrown after the murder. He peered down into the place and asked the officers to indicate the point where the body was taken out. They did so. Barrington looked a moment longer, then the officers passed on with Barrington. Mrs. McCann was talking with her lawyer and two newspaper men at the time. She did not notice the crowd approaching until it was almost opposite her. Then her eyes fell on Barrington and she burst into tears.

At the station Barrington got on the front platform of the car with the officers. The car was crowded. The passengers learned who the prisoner was and there was a scramble among them to get a look at the fellow. Barrington realized that he was the attraction. If it worried him he did not evince the fact by his actions.

At Wellston several hundred people were waiting when the car reached there. There was a rush of the curious to see the bogus lord and the alleged murderer. When he saw the crowd Barrington became more nervous than he had been at any time during the day. It is probable that he anticipated violence, and the color of his cheeks faded away. With the officers he took the front platform of a suburban car, transferring again at De Hodiamont for Clayton. Mrs. McCann and sister and friends followed the prisoner to the city on the next car.

BELIEVES BARRINGTON HAD AN ACCOMPLICE.

A. C. Davis, attorney for Mrs. McCann, believes Barrington killed McCann and that he had an accomplice. A portion of McCann's jewelry is still missing, and the lawyer thinks it is in the possession of the accomplice.

He also recalls a story told by a colored man named Taylor, who claims he saw Barrington and two other men, with a carriage, near the scene of the crime the afternoon of the day McCann
293 disappeared.

Other facts in connection with Barrington's movements in the neighborhood convince him that his theory of the crime is the right one. Martin Coat, the messenger boy, who carried the fictitious letter to the McCann home, yesterday identified Barrington as the man who gave it to him. Mrs. Lennon, the widow who lives near the quarry, also identified Barrington yesterday as a man she had seen in the neighborhood several times.

VISITED PLACES BEFORE.

The officers believe Barrington was several days planning the murder. There is evidence to show that he several times visited the locality where the crime occurred and that he was perfectly familiar with it before he took McCann there.

The place is an ideal one for the perpetration of crime. The closest house is several hundred yards away, and the place is shut off from it by clumps of small trees and bushes. It is thought that the murderer did not intend to use a revolver only as a last resort. The knife or razor was first selected as the weapon.

M'CANN SHOWED FIGHT.

When McCann was attacked with the blade he showed fight, it is believed. It is possible that he was becoming too much for his assailant, and, the latter realizing it, resorted to his revolver to make the accomplishment of the deed more certain and swift. The finding of the razor handle and the cuts on the face, neck, and hand of the murdered man constitute sufficient evidence that the blade was used and that it was used before the revolver was brought into play.

ABSENCE NOT REPORTED TO AVOID SCANDAL.

A. C. Davis, attorney for Mrs. McCann, explained yesterday why Mrs. McCann had not acted more promptly in reporting the disappearance of her husband to the police.

When Barrington returned to the McCann house the morning after the disappearance, he told Mrs. McCann the story he orig-
294 inally told the police relative to his going to Suburban Park with McCann and what transpired after they met the two men and two women there, with whom they left the park.

Barrington assured Mrs. McCann that her husband was safe and would return home all right, as he was in the hands of friends. To report McCann's disappearance at that time, Barrington assured her, would only result in a scandal and unpleasant notoriety, which McCann desired to avoid.

The story told by Barrington appeared plausible to Mrs. McCann, and she followed his advice until her attorney induced her to do otherwise.

ATTORNEY WAS UNEASY.

Mr. Davis was uneasy over the absence of McCann. He so told Mrs. McCann, and he also informed her that Barrington had a criminal record in England. The woman had never heard this, notwithstanding the reference to it by the newspapers at the time Barrington became embroiled as a result of his marriage with Miss Cochrane, of Kansas City. She at once consented that the police be notified, and they were.

Barrington had been befriended by McCann, who had not only taken the fellow into his home to live, but who had loaned him considerable money. Mrs. McCann could not conceive that Barrington would harm her husband after what the latter had done for him.

CORONER KOCH WILL REOPEN INQUEST.

Coroner Koch stated last night that the inquest would be reopened Tuesday at Clayton, and that evidence at hand relative to the crime would be heard and another verdict rendered. The coroner held an inquest Saturday, and a verdict of murder was returned. Yesterday's developments forced further inquiry.

WIFE KNOWS NOTHING OF LIFE INSURANCE.

If James P. McCann carried life insurance at the time of his death, Mrs. McCann was unaware of the fact yesterday. To the Globe-Democrat she said she did not believe he carried any
295 insurance.

Mrs. McCann said her husband had done business with the Merchants-Laclede Bank. She could not say how much money he had on deposit there, but that only a short while before his death his account amounted to $5,000. A year ago his mother died, leaving him a fortune of $30,000. McCann came from Lexington, Ky.

GIRL TELLS OF FINDING M'CANN'S POCKETBOOK.

Martha Lange, the 12-year-old girl who found the pocketbook and razor handle near the place where McCann's body was recovered, described her find to the officers yesterday in detail.

The blade of the razor had been broken off, she said, near the handle, and has not yet been found.

The pocketbook contained a card on which was inscribed the name of a man living on Minerva avenue, near Wellston.

The card was thrown away and the razor handle broken to pieces by a baby brother of the finder. The pocketbook was preserved, however, and is now in the hands of the officers.

A lead pencil was also found near the same place, which was taken away and used. Only a short piece of it was recovered from a negro family, where it was taken. It is held for identification.

The attorney believes that the story will prove valuable in connection with the story told by Barrington of a wagon having been pressed into service before the disappearance of McCann. The police, however, place no credence in the story.

ENGLISH RECORD OF CROOK POLICE THINK IS BARRINGTON.

Efforts made to identify Barrington as a noted and daring English crook while Barrington was serving out a fine in the workhouse here were partially successful. Sir Frederick Sydenham Burgoyne, George Frederick Melville Barton, and "Lord" Barrington were believed to be the names of but one man, who employed one of the three titles as occasion presented itself.

296 The record of Burgoyne, alias Barton, before coming to this country, as sent to the local police from Scotland Yard, London, England, shows that the owner of these names had been sentenced to serve the greater part of his life behind the bars.

When but a lad he was sentenced for robbery to ten years in the reformatory. Later in his career, on two charges of burglary, he was sentenced to Dartmoor prison, ten years on each count. The last offense scored against him in England was for disturbing the peace while going under the name of "Lieut. Col. F. Seymour-Barrington." He was sentenced to three months for this breach of the law.

A photograph of the record of Burgoyne, alias Barton, is in possession of Chief Desmond; also a Bertillon photograph of the English crook, which is said to bear a remarkable resemblance to Barrington, although the picture shows Burgoyne-Barton wearing a full beard.

BARRINGTON HAD NOTE ADDRESSED TO HIMSELF.

Martin Coad, sixteen years old, employed by the Missouri District Telegraph Company as a messenger boy, visited the Four Courts yesterday morning before Barrington was taken to Clayton and identified the bogus lord as the man who visited the company's office at 412 Pine street June 22 and had a message sent to himself at 2901 Franklin avenue.

According to the lad's story Barrington stated that he wanted a letter delivered. He had a typewritten note addressed to Mrs. McCann on gray linen paper and sealed in an envelope.

Barrington requested Edward F. Powers, chief clerk of the Missouri company, to place the note in one of the company's envelopes and address the latter for him to F. Seymour-Barrington.

Mr. Powers complied and Barrington left the office.

A few hours later young Coad delivered the letter to Barrington at the McCann home.

Barrington opened the letter and handed it to Mrs. McCann to read.

297 It stated that the writer was in safe hands and would return in a short time, and was signed "E. M. for Jim."

Mr. Powers also identified Barrington as the man who had requested him to address the letter.

It was partially on the evidence of this note that Barrington was at first released. He told Chief Desmond that the letter was from McCann and also quieted the fears of Mrs. McCann for a time by the "fake" telegram.

MRS. M'CANN DENIES HERSELF TO ALL VISITORS.

Late last night Mrs. McCann excused herself to all callers, through Mr. Brown, a former friend of her husband, who stationed himself at the door of the McCann home at 2901 Franklin avenue.

Mr. Brown stated that he was acting as general utility man about the place to relieve Mrs. McCann of certain cares which needed attention. He stated that Mrs. McCann became sick on returning from Bonfils, and that her sister, Mrs. Evans, was with her.

"Mrs. McCann has instructed me to state positively to all who come that she will not receive anyone, and in the face of this I do not even intend to convey any message to her," Mr. Brown said.

Telegrams were sent last night by this man from Mrs. McCann to Mesdames Hume and Barclay, sisters of the murdered man, who live in Lexington, Ky. The telegrams notified them of the coroner's verdict and of the developments.

NEGRO LOOKED FOR OFFICER TO ARREST BOGUS LORD.

Motorman William Mott, who took the first car out over the St. Louis, St. Charles and Western Railroad on the morning of June 18, claims to have seen Barrington five times at different places along the line as he was walking towards Wellston.

The first time the bogus lord was seen near Bonfils, as Mott passed going west on his first trip. He says Barrington wore a

298 Panama hat. His car passed five times before the traveler reached Wellston.

Charles Meyer, a colored man of Wellston, claims to have gone for a policeman when he saw Barrington walk into town that morning, believing from his appearance that the man had been connected with a crime. Before he could find an officer, however, Barrington boarded a suburban car downtown.

On this point the officers say Barrington contradicted himself. When he was questioned at first, he stated that he walked the entire

distance home, but when told that he could be confronted with a witness who saw him board a car at Wellston he admitted that he had rode from that point to the Leland Hotel.

KIELY SAYS HE ONLY PAROLED BARRINGTON.

Chief Kiely said that when he released Barrington Thursday he imposed upon him a duty similar to that imposed on all prisoners who are released on parole—by requiring him to report at the chief's office.

Friday, promptly at the time specified, the chief says, Barrington appeared at police headquarters and reported as requested. Not many hours later the order for his arrest came.

OLD FRIEND MAKES TRIP TO IDENTIFY.

F. D. Monahan, of 3635 North Market street, a transit conductor, went to Bonfils yesterday afternoon to identify McCann's remains. He had known McCann for six years in St. Louis and in Kentucky. Before the gold tooth was found he was not certain about his identification, but this he recognized at once. His identification was positive.

M'CANN'S BODY BROUGHT TO THE CITY FOR BURIAL

McCann's remains were brought to the city by Harrigan & Sheehan, undertakers, late last evening and taken to their undertaking establishment on Morgan street, near Beaumont, less than two blocks from the McCann residence on Franklin avenue. The body was in such a state of decomposition that the undertakers declared they could not take it inside the house and they intended to leave it in the wagon in the yard all night.

299 BROWN'S THRILLING MIDNIGHT EXPERIENCE.

The young man known as Brown told a remarkable story of an occurrence at the McCann home Friday night which has a direct bearing on the charge against Barrington.

Brown had gone to the Leland Hotel several weeks ago as a roomer. On Friday morning Mrs. McCann, who, he said, explained that Barrington had told her that McCann objected to his presence in the house during his temporary absence.

Brown says that he was to receive a telephone message from McCann as soon as the latter returned, which was to have been last Saturday. He stated that Friday evening he called Mrs. McCann by telephone and asked here about her husband. Mrs. McCann then told him she wanted to see him, he said.

MISTRUSTED BARRINGTON.

After calling at her home, he stated that he was told that he must stay and protect her from Barrington, whom Mrs. McCann mistrusted. He was told that he could sleep in the parlor, but he preferred to sit up all night.

"At about one o'clock," he said, "as I was sitting reading alone in the parlor, Barrington came down from his room on the second floor by way of a rear flight of stairs. The light was turned low in the front hall. In the parlor the gas shone brightly, but this could not be seen by Barrington until he was opposite the door.

"As the man discovered me he looked queerly and started with almost a leap for the front door, where he tested the lock. He then paid his attention to the gas and returned to his room.

"His hair was parted perfectly and he wore his best clothes, showing that he had not yet gone to sleep. About five minutes after he returned to his room I determined to learn what had brought him in that stealthy way to the front parlor. Three times I knocked at his door, but received no response. Then I called and tried to open the door, but everything was silent, and I returned to the parlor."

300 STREET CAR MEN TELL OF TRIPS TO BONFILS.

Motorman Sam Smith declares that he remembers Barrington as a passenger on his car as far as Bonfils on the afternoon of June 17th or 18th. He does not remember which day, but is positive that the man was Barrington. He said that the man boarded the car at Wellston and wanted to ride with him on the front platform, which is against the rules of the company.

He seemed piqued when told to get inside the car, and took a seat near the front end.

When Bonfils station was reached and he was told that he could not go further on account of the flood he seemed angry.

Barrington got off the car and went in the direction of the quarry, Smith said. He saw nothing more of him until he passed an eastbound car on a siding on the subsequent trip out, when he noticed Barrington was a passenger on the returning car.

Charles Sack, John Oellien, P. G. Pallerdy, L. Hesserick, Isaac Bennett, and Mark Berry, all street car men employed by the St. Charles Railroad Company, will be witnesses to testify as to Barrington's trips to Bonfils.

Mrs. Lennon, who lives near the quarry, also recognized the man yesterday when he was taken by her home by the officers as the man she had seen pass the road several times of late.

M'CANN BOUGHT WEAPON FOR BARRINGTON.

An intimate friend of the late McCann stated yesterday that the revolver with which he was killed was purchased only a few days by McCann at the request of Barrington. He said that Barrington

went to McCann with a story of robbery near his home, which he used as an argument in favor of keeping a revolver in his (Barrington's) room.

"All right; if you want to assume the role of a night watchman for the place I will get a gun for you," McCann is reported as saying. Together they went to a hardware store, it is said, and Barrington picked out the weapon that he wanted, which was paid for by McCann.

301 BARRINGTON SHIVERS IN PASSING GALLOWS.

As the officers took Barrington from the court-house across the "bridge of sighs," which leads into the second story of the county bastile, they passed over the trap door through which several men have been hanged.

At present the local fire department has a bell on the jail, with a rope which hangs down near the trap door, for use as a village fire alarm.

The prisoner's attention was called to the rope and the trap door as he went into the jail; his cheeks turned an ashen color and he quivered like a leaf.

Just before strating for Bonfils station yesterday afternoon Barrington broke down in Chief Desmond's office and cried like a child. Between his sobs he declared that he was being made the victim of a conspiracy and that he was wholly innocent of the death of McCann. The breakdown came after a siege with Chief Desmond, and those who are familiar with the latter's abilities as a "sweater" marveled that Barrington held out so long.

When the officers, with Barrington, started for the street car en route to Bonfils, Barrington had regained his composure and apparently was as cool and collected as any of the men who had him in charge. All the way to the scene of the murder he chatted on various topics. When an officer asked him concerning happenings that preceded the crime, however, he generally ignored or evaded the question.

PRISONER NOW IN SHERIFF'S CUSTODY.

Barrington was taken in charge after the post-mortem by Deputy Sheriff J. W. Bellairs and Harry Schnecko and taken to Clayton, where he was locked up. Deputy Ossenfort remained to gather more evidence, and sent Officer P. Kirk, of the mounted district police station, with the prisoner in his stead.

302 Sheriff Hencken will have charge of the prisoner from now on until his trial and, if nothing unfor'seen develops, will keep him at the Clayton jail.

MRS. EVANS IDENTIFIED BODY BY THE GOLD TOOTH.

One of the bullets fired into McCann's head knocked out several teeth. One of these was gold crowned. The physicians found it

in his mouth, and, to better enable indentification, replaced it where it belonged. McCann's sister-in-law, Mrs. Evans, relied mostly on this tooth by which to identify the body.

M'CANN'S RAILROAD PASS FOUND ON OLIVE STREET.

A railroad pass to Chicago and return, issued by the Wabash Railroad in the name of McCann, was found yesterday in front of 3223 Olive street by Officer Byrne of the 8th district. The ticket was made out for the account of the Chicago Freight Commission, the police believing that Barrington intended to use the ticket to escape from St. Louis and that it drew out of the patrol wagon when the bogus lord was being carried to the police station.

FOREIGNERS SUBJECT TO AMERICAN LAWS.

The fact that F. Seymour-Barrington is probably a citizen of Great Britain will have nothing to do with his being tried in this country on the charge of murder. And if he is found guilty, the sentence of the court will be carried out the same as it would be in the case of an American citizen.

Foreigners in the United States are as much amenable to the laws of this country as are citizens of the country.

The Maxwell-Preller case is cited as a local instance.

M'CANN'S FAMILY WELL CONNECTED IN LEXINGTON.

[Special dispatch to the Globe-Democrat.]

LEXINGTON, KY., *June 28.*—B. T. Hume, a wealthy landowner of Fayette County, brother-in-law of James P. McCann, found dead in a pond near St. Louis Saturday, left for that city to-night to take charge of the remains and personal effects of the dead man. 303 The body of McCann will be brought to this city for burial unless the funeral has been held in St. Louis before the arrival of Mr. Hume.

McCann was born and raised in this county and was for many years identified with the racing game. He was the owner of a fine breeding establishment near this city and bred and raised a number of good performers on the western tracks in the last few years. He sold out his entire farming and horse interest here about two years ago and moved to Chicago, and since that time very little has been heard of him by his family.

MARRIED IN CHICAGO.

Shortly after going to Chicago McCann met and married a widow, whose maiden name was Miss Jessie Colloway, but the name of her first husband was never known to his family here. Before her first marriage she was a social favorite in her home town of Owensboro,

Ky., where her family is highly connected. McCann has a brother living in Oklahoma, I. T., who figured extensively in the daily newspapers several years ago on account of his wife having secured a divorce and married Senator Peake, of Chattanooga.

KNOWN AS "HANDSOME JIM."

McCann had a cousin, James McCann, who died here several weeks ago under peculiar circumstances and during the residence of both in this city. The one found dead in St. Louis was known as "Handsome Jim," to distinguish him from his cousin.

Q. What do you find on page 72?

A. I find a clipping from the St. Louis Chronicle newspaper, dated and published in the city of St. Louis, June 29—paper of general circulation.

Mr. GROVER. I offer in evidence on this page under this title, "History of the Fiendish Murder of J. P. McCann," which is in words and figures as follows:

HISTORY OF THE FIENDISH MURDER OF J. P. M'CANN.

"Lord" Frederick Seymour Barrington, undoubted murderer of his benefactor, James P. McCann, spent Sunday night in the jail at Clayton, resting as easily and unconcerned as though he were in a first-class hotel.

304 In a tin-covered box in the yard behind the Harrigan & Sheehan livery stable, 2818 Morgan street, the mutilated, decomposed body of the murdered man lay covered with a tarpaulin all of the night, while less than three blocks away, at the Leland Hotel, 2901 Franklin avenue, the widow wept out her grief.

At the Four Courts Asa E. Mitchell, of 119 S. 6th street, friend to Barrington, who acknowledges writing the letter which Barrington claimed was from McCann, was held to explain his connection with the matter, but he made it plain that he acted in good faith and later on was let go, to be used as a witness when Barrington faces trial for his life.

Q. On this page 76 what do you find there, Mr. Altheimer?

A. I find there is a clipping from the St. Louis Republic, a daily newspaper of the city of St. Louis, of its general issue, Monday, June 29th, 1903.

Mr. GROVER. I offer the two columns under heading: "Mrs. McCann says she thinks killing was prearranged."

(This offer is in words and figures as follows:)

MRS. M'CANN SAYS SHE THINKS KILLING WAS PREARRANGED.

In a statement made by Mrs. Jessie McCann last night the theory is advanced that James P. McCann was killed as the result of a

prearranged plan, and that the object of the killing was to secure money. Mrs. McCann says:

"My husband had an account in the Merchants-Laclede Bank of $6,000, which I could draw on, and I have several thousand dollars in my own name.

"The perpetrators of the crime thought that by the supposed mysterious disappearance of my husband they could work on my sympathies and thereby extract money which would go, supposably, toward the relief of my husband.

"I believe that the mysterious telephone communications and telegrams, alleged to have come from my husband, asking for financial assistance, prove the truth of this theory."

Mrs. McCann gave the following account of the relations
305 that existed between Barrington and her husband:

"My husband first met Barrington in J. W. Gillespie's saloon, at No. 100 North Broadway. Barrington was then acting as manager of the saloon. Mr. McCann went into the saloon and met Barrington. He did not tell him his name, but gave Barrington $50."

According to Mrs. McCann, Barrington did not again meet her husband in the saloon, but the "lord," after he had left Gillespie's employ, began to make inquiries about his generous friend, and finally located him.

Barrington secured a room near Franklin and Garrison avenues and called at McCann's house. He begged McCann to give him a home.

"Mr. McCann gave him a home with the understanding that Barrington was to act as his servant or valet. Barrington waited on him. He shined his shoes, brushed his clothes, and dressed him. He even pressed his trousers and showed by his work that he was experienced in the duties of a valet. He admitted that he had performed such services.

"After he had been in my husband's employ for a time he told a story about some friends that he had at Bonfils, in St. Louis County. He said that he had $2,500 pension money coming to him, and that this money would be due him July 9. He said that the friends at Bonfils had promised to lend him $1,000 on these pension papers.

"On the night of my husband's disappearance I did have a headache and my husband promised to get me some headache powders. Barrington also said he had a headache, and he and Mr. McCann started to the drug store together. At supper that night Barrington talked about a visit he intended to make in Bonfils that night. He was to see the people who intended to lend him the $1,000. I don't think that Mr. McCann intended to accompany him.

"They went to the drug store and did not return."

What took place after Barrington and McCann left the
306 house at 2901 Franklin avenue is a matter of conjecture, but Mrs. McCann has concluded that Barrington induced her husband to go to Suburban Park, and after they had imbibed in intoxicating drinks induced him to accompany him to Bonfils.

Q. What do you find on page 78 of this book, Mr. Altheimer?

A. I find a clipping from the St. Louis Chronicle of June 29, 1903, Monday.

Mr. GROVER. I offer in evidence all of this article.

POLICE SAY BARRINGTON WILL SWING.

At the grave of handsome Jim McCann, by Col. J. W. Church.

Overhead a cloudless sky, beneath on wheat field, grove, and road the shimmer of the afternoon June sun glistened and wavered.

A dusty winding road leads over the rise from the trolley station of Bonfils, near St. Charles. A few hundred feet up the road stands a rude cabin, the home of a little family who stand or sit silently about the door, numbed and dazed by the startling events of the past few days.

Within the cabin, seated on the only chairs the hut offers, are two women, stylishly gowned in black and white. The younger of the two sits with her hands clasped, her lips tightly drawn in grief and anger, while from above her pale cheeks her black eyes flash thoughts of hatred and revenge against the murderer of her sister's husband. But the bereaved wife sits with her face buried in her handkerchief, sob upon sob bursting from her as the terrible reality dawns slowly upon her benumbed brain.

Farther down, the roads winds round into an opening among the bushes and trees, and on into a dark, gloomy spot, overhung by heavy branches, where at one side, far, far down below the undergrowth of the quarry, lies a deep, black pool.

A group of quiet, low-voiced men are here, and just at one
307 side of them, two others, armed with spades, are digging into a freshly made grave. Near by stands a wagon, the black oblong end of a wagon protruding through the opening in the rear.

Early in the afternoon a cavalcade winds slowly up the road from the little station. At its head walk three men. Two are stalwart, silent detectives, and between them, haggard, his eyes shifting here and there beneath their heavy brows, walks "Lord" Barrington. His silk hat is badly mussed, his clothes unkempt, and his manner wavering between defiance and dejection.

On past the little cabin where the broken-hearted wife and her sister await the fresh torture of this grewsome afternoon; on over the hill-top to where the men are digging deeper and deeper into the earth, the "lord" is brought by his keepers.

The box is reached at last, the cover torn aside, and the frightful, loathsome, naked corpse of the murdered man lifted from its grave.

The detectives bring Barrington quickly forward.

"Is that James P. McCann?" they ask.

"I do not know. I do not think so," he replies.

Again and again they repeat the question and always the same low, quiet answer, "I do not think so."

A messenger is sent to the little cabin on the hill and soon the wife and sister-in-law are brought down to identify, if so they can, the body as that of James P. McCann. A blanket is thrown over the naked, bloated, green-gray body, leaving only the bust exposed, and on this ghastly, foul, and unclean thing the wife of "handsome Jim McCann" must gaze. Hair, eyes, and mustache gone; his face a dirty blotch of brown and green, the nose and mouth eaten away, and from the sightless sockets and the torn, gaping mouth creep forth thousands of white crawling things, rolling across the face and falling in scores to the ground.

Leaning heavily upon the arms of two friends, while not ten feet away, cool and curious, stood Barrington, the poor, tortured
308 woman bent over this awful, ill-smelling mass of decay, gazed a moment, and then—"Oh, God! There lies the sweetest man God ever made."

A moment more and she fell, sobbing hysterically, half fainting, into the arms outstretched towards her. Her words tell their own sad tale, but the cold hand of the law reaches forth.

"You have not identified him," said a detective. "Come back."

She turns, brave in her suffering, but others remonstrate against the torture going any further.

"Is that your husband there?" they ask.

"Yes; he is my husband, my beloved husband," she sobs, and then, released by the inquisitors, she is carried back to the little cabin, to throw herself on the bed and sob and moan until her strength gives way beneath the strain and, perforce, she lies quiet.

HISTORY OF THE FIENDISH MURDER OF J. P. M'CANN—BARRINGTON PREPARED FOR FLIGHT.

Hastening to the Leland Hotel, the detectives caught Barrington as he was getting ready to follow his trunk to Union Station, and placed him under arrest. In the patrol wagon he tried to dispose of McCann's diamond pin and gold watch, and did throw away a railroad pass issued to McCann. He was taken to the Four Courts, and inside his trunk, brought there and opened, McCann's cane and pistol were found.

At the Leland Hotel the blood-stained clothes worn by Barrington the night of the murder were found hidden in a barrel in the shed behind the hotel. Then John Oellien, Isaac Bennett, Charles Sach, and Louis Hesserick, motorman and conducters of the St. Louis, St. Charles and Western Railway, all identified Barrington as the man they had seen ride with another man to Bonfils Station at 10 o'clock on the night on June 18.

Barrington walked back after the murder. He was seen a dozen times by motormen, and seemed eager to avoid being detected.
309 The police have reason to believe that Barrington planned the murder for at least two weeks. He was at a loss for a suitable place, and it took him ten days to locate what he wanted.

He spent these days in trips out into St. Louis County. He would ride to different points along the electric line and, leaving the road, would wander across fields and over country roads. How he selected the quarry on Taussig avenue will be known only when he confesses. How to get McCann there was another problem. Barrington knew that McCann was a man of peculiar habits. He often told his wife that he was going away for a time, and would leave, after giving her plenty of money, and be gone sometimes as long as three weeks. That habit was McCann's death. Barrington often said that he had an insurance paper upon which friends of his in the county were willing to advance $1,000. He spoke of his trip in connection with this, but did not press the matter as important, unless he was alone with McCann. On the night of June 18 all was in readiness for the carrying out of his plot. He had McCann's pistol and cartridges.

"Oh, my, what a beastly headache I have," he declared on the steps of the Leland, as he sat down there with McCann and others; "has anyone a headache powder?"

None had. Mrs. McCann said she also had a headache, and suggested that her husband get her a powder.

Barrington left with McCann and lured him to his death.

At the drug store the powders were forgotten. A few drings of whiskey made McCann forget everything, and a good car ride, suggested by Barrington, was promptly agreed to by the victim.

On the car, which they took west to the city limits, the two men met a good woman. She talked with McCann and promised to pray for him, after giving him a tract.

M'CANN HAD A PREMONITION.

Something seemed to come to McCann after this. Was it a premonition of his approaching end? When he got off the car he handed the conductor one of his cards.

"You'll remember who I am," he said.

Barrington, if the police theory is correct, told McCann that the party who wished to buy the insurance policy lived close by. There is every reason to surmise that when the pair reached the clump of trees near the quarry, McCann in front, Barrington suddenly set upon him. He had a knife, as well as a pistol. A bruised nose and blackened eyes, as well as a gash between his thumb and index finger, show that the first assault was unsuccessful and that McCann put up a desperate fight for his life. Then Barrington began shooting. The first bullet struck McCann under the right side of the chin.

"Don't shoot. For God's sake don't kill me," came the wailing cry on the night air to the ears of Mrs. Charles Krueger, whose home is 100 yards from the quarry.

A second shot was heard, and the cries ceased. The shooting, it appears, took place some little distance from the water. Barrington first searched the body. He took, besides the jewelry, winning tickets on the races amounting to $164. Then he stripped the body.

The clothes he disposed of after he had carried the body to the quarry and dumped it into the water. He overlooked the shoes and purse, and this oversight will bring him to the gallows.

Martha Lang found the purse and the razor handle as well.

WAS MURDERED FOR MONEY.

Barrington murdered McCann for money. Why he remained here so long after the tragedy can only be accounted for under the hypothesis that he is as shrewd a criminal as ever came into the hands of the police, and figured that by remaining here he would not be suspected, and he had also every reason to suppose that the body would be found and buried as an unknown. The tell-tale shoes and purse spoiled this for him. Barrington, alias Burgoyne, alias Barton, alias Victor Vernon Sydenham, sentenced to six months' imprisonment in the workhouse by Judge Tracy for an assault for which he straight he would have a good ceration, the very change 311 he most desired. The best citizens of St. Louis believed he had been punished on general principles, and his English prison record was lost sight of in the effort to see that justice was done. McCann was one of those who went to his assistance when he most needed aid. A downtown saloon keeper gave him a position, and if he had but run straight he would have had a good chance in St. Louis at almost anything he might elect to follow.

"The saloon business is disgusting to a gentleman, don't you know," he said only a few weeks ago.

"I shall leave it and follow literature. A very dear friend has offered me the chance and I shall embrace it, don't you know."

That very dear friend was McCann. The latter took Barrington to his home and introduced him to his wife. He thought Barrington needed a new suit and gave him $50. He took the viper wherever he went, paid all his expenses and saw that Barrington had plenty of money. Barrington was like his brother. He let the Englishman do as he pleased about the hotel. Barrington thought himself a sort of manager. He aspired to be owner.

WALKED BACK TO THE CITY.

After disposing of the body and clothes Barrington started back to St. Louis. If he has a conscience it dogged him every foot of the way back to the McCann home. Street car men saw him skulking among the trees as the cars passed. The murderer dared not ride. His blood-stained clothes and bruised face would have cried out the murder. He reached the McCann hotel at 8 o'clock the next morning. Jesse Morrison, the house man, was summoned.

"Clean these clothes," Barrington ordered him.

Morrison questioned him.

"Do what you are told," declared the Englishman with a burst of profanity that frightened the negro.

"But where is Mr. McCann?"

"—— him. I hope he never comes back. If he does I will
312 kill him."

To Mrs. McCann he told an improbable story about going to Suburban Garden with McCann, of meeting men and women there, and of a fight which ended in McCann going away with two men and a woman, leaving Barrington, as he told it, senseless in a gutter.

Strange to say, after Mrs. McCann had finally told the story to her attorney, A. C. Davis, and he had transmitted it to the police, Barrington, when questioned, gave the police a direct line to the key of the tragedy. He took them three miles to Suburban Garden. It would seem that a little clever work on the part of the detectives would have uncovered the crime several days ago. As it was only sheer luck that landed Barrington in the net, and this luck followed his own supreme confidence in his ability. He had fooled the St. Louis people so easily before that this was easy, and he made no attempt to get out until the trail got too warm.

Asa Mitchell, at Barrington's request, wrote the notes and sent the telephones which Barrington thought would conceal the murder for all time.

Q. What do you find on pages 84 and 85 of this book, Mr. Altheimer?

A. I find a clipping from the St. Louis Globe-Democrat, a paper published in the city of St. Louis, regular edition of Wednesday morning, July 1st, 1903.

Mr. GROVER. I offer in evidence this clipping, the picture of "The Burial of James McCann," together with the article that pertains to the Barrington-McCann matter on this page and on the second page also.

313 M'CANN BURIED WITHOUT SERVICES—BARRINGTON TELLS NEW STORIES.

Funeral of murdered man held before advertised hour to circumvent curious crowds—Only relatives present—Widow shows deep emotion—Bogus lord seems familiar with prisons.

The funeral of the murdered James P. McCann was held yesterday afternoon from the undertaking rooms of Harrigan and Sheehan, 2618 Morgan street, but not according to the arrangements publicly announced, the body being interred in St. Peter's Cemetery.

A member of the undertaking firm explained that a decoy notice was given out to mislead curiosity seekers. The funeral was arranged to take place at 2 o'clock, and the burial was to be, according to notice, in Bethania Cemetery.

An hour before the appointed time three carriages bearing rela-

tives, acquaintances, and servants of the murdered man left the undertaking parlors, following the undertaker's wagon containing the remains of McCann.

STOPPED FOR THE WIDOW.

There were no services held at the undertaker's, but en route to the cemetery the cortege stopped at McCann's former home, the Leland, 2901 Franklin avenue, where the widow of the murdered man joined the other mourners.

Among the limited number who attended the funeral were Mrs. Jessie McCann; her sister, Mrs. Mamie Evans; Joseph McCann, of Grove, I. T., brother of the slain man; B. T. Hume, of Lexington, Ky., his brother-in-law, and William Morrison and wife, negro servants at the Leland.

The cortege arrived at the burial grounds shortly before 4 o'clock and was delayed there for half and hour because of other funerals. All of those who attended the funeral, excepting Mrs. McCann and her sister, Mrs. Evans, left the carriages on arriving.

GRAVE WAS TOO SMALL.

314 Then came another delay. It was found that the grave was dug too small for the box containing the remains, and the sexton and gravediggers had to be called to enlarge the hole.

While the gravediggers were at work an occasional sob or moan could be heard from the carriage in which Mrs. McCann and her sister were seated. Both Mr. Hume and Joseph McCann paid occasional visits to the widow's carriage.

When all was in readiness these two men assisted Mrs. McCann out of the vehicle and led her to the grave. There she gave full sway to her emotions. No services were held at the grave.

BODY TO BE REMOVED.

The grave is in the midst of a score of new mounds in that portion of the cemetery known as "public ground," but it is the intention of the murdered man's relatives to have the remains exhumed as soon as the courts have finished with the case.

"It was one of the expressed wishes of my brother that he be buried alongside the graves of our parents in Leestown Pike Cemetery, in Lexington," Joseph McCann said.

BARRINGTON CONFESSES FAMILIARITY WITH PRISON LIFE—BECOMES BITTER.

Barrington confessed his familiarity with prisons and prison life yesterday.

He was in a bad mood all day. Every little thing appeared to irritate him. At times his manner bordered on the hysterical.

Monday he requested the sheriff to send copies of all the St. Louis daily papers to his cell. The request was ignored. For some reason Sheriff Hencken decided that it would be better if the alleged murderer did not read what was being said about him. The sheriff's action aroused Barrington's anger.

"This is the only prison I have ever known that refuses such a privilege to an unconvicted man," Barrington declared.
315 "It is a contemptible outrage."

"You appear to be well acquainted with the rules of prisons," a reporter for the Globe-Democrat suggested. "You must have had considerable experience with them."

The bogus nobleman showed no nervousness at this suggestion. Instead he continued to assert that he was being unjustly treated, and declared that he had certain constitutional rights that should be recognized by the authorities in charge of the jail.

CLAIMS TO BE BRITISH SUBJECT.

"Are you an American citizen?" he was asked.

"No, sir; I am a British subject," he answered, as if proud of the fact.

Barrington's tongue had lost much of its glibness yesterday. He was not near so anxious to talk as on the previous days since his arrest. Evidently he had begun to realize that his many different stories were injuring any future effort he may make to defend himself.

He was told that the officials had agreed that he had proved himself one of the most monumental liars they had ever had any experience with. He apparently cared nothing for the officials and sneered at their opinions of him.

M'CANN'S RELATIVES AT JAIL.

B. T. Hume, brother-in-law, and Joseph McCann, brother of the murdered man, took a look at Barrington during the morning. Mr. Hume told him that he had identified the body of the murdered man as that of James P. McCann.

"Are you positive? Can you be sure of it?" Barrington quickly asked. Mr. Hume answered that he was perfectly satisfied.

McCann was introduced to Barrington, but there was no exchange of civilities. Barrington declared that he could see no resemblance between the brothers.

"I do not believe the body taken from the quarry is that
316 of Jim McCann," Barrington told Hume and McCann.

"Then where is Jim McCann?" he was asked.

"I will reserve my opinion until later," the bogus lord replied.

SPEAKS OF DEFENSE PLAN.

Barrington insisted yesterday that he would be able to put up a good defense when the time arrived for it. He denounced those who had told stories tending to fasten the noose around his neck as a "pack of falsifiers." He was certain that they would not repeat their stories under oath.

Several times, in speaking of his defense, he used the pronoun "we" instead of "I." Asked who he meant by "we," he declined to answer.

Barrington is doing everything possible to surround his defense with as much mystery as he can conjure. He intimates that he will throw a few sensations when he is arraigned. He said yesterday that he did not know whether he would testify at the coroner's inquest to-morrow.

PLAYING FOR SYMPATHY.

It is evident that Barrington has already began playing for sympathy. He commenced to cry yesterday that the officials were prejudiced against him, and he intimated that he would not be able to secure a fair hearing at Clayton. He will get justice, the Clayton people say, and nothing else. Shortly after noon yesterday a middle-aged man, who claimed to be a lawyer, called at Sheriff Hencken's office and asked to see Barrington. He did not give his name and admitted that Barrington had not sent for him. Under the circumstances he was not permitted to see the prisoner.

Later in the day some one told Barrington that a lawyer had called and asked to see him. Barrington appeared to be very much incensed because the man had not been admitted to his presence, and he used the fact in an effort to show that even the officials were so
317 extremely prejudiced that they would not give him an opportunity to secure counsel.

ASSERTS HE IS INNOCENT.

As the days pass Barrington grows more strenuous in asserting his innocence of McCann's murder. Sunday he admitted everything except the murder. Monday he insisted that he was innocent of the crime.

Yesterday he asserted that the charge against him was preposterous. When first arrested after the identification of McCann's body Barrington asserted that his friendship with the murdered man should shield him from all suspicion of having caused his death. The day following he talked as though there had never been any friendship between them. Yesterday he was bitter in denunciation of the character of his alleged victim.

WAS NOT A VALET.

Barrington denied that McCann looked upon him as his valet or servant. He claimed that he was always treated as an equal. The only menial work he ever did for the McCanns, he declared, was when he assisted McCann to hang some pictures. The charge that he had blacked McCann's shoes shocked him. He would not polish the shoes of the Prince of Wales, he said. The allegation that his mannerisms were more those of a common English servant than a gentleman seemed to cause him a great deal of pain. The charge that he probably secured most of his education from prison schoolmasters cut him deeply.

SIMULATED INTEREST.

During the day the body of an old man was found near Carsonville. Somebody told Barrington that it was believed to be McCann's. He at once simulated interest in the story.

A newspaper man told him that the New York woman, Mrs. Barton, who claimed to be his wife, and who accused him of having committed murder in England, was being brought here to identify him. Barrington took a long breath and remarked, "Well, let her come."

Barrington has passed the tearful stage. He has determined
318 to make a stand for his life. He no longer admits that the circumstantial evidence is sufficient to convict him. He wants to live.

THEY CAN'T HANG ME.

"They can't hang me on a pack of lies," he declared. Those who expect to give evidence intended to incriminate him he places in two classes—they are either mistaken or liars, he says. He pretends to believe that Mrs. McCann will not testify against him. He thinks the negro porter at the Leland will not stick to his story, and he insists that the street railway men, who claim that they saw him as he stole like a murderer back to the city after he left McCann at the old stone quarry, will not be positive under oath. Barrington was told that Mrs. McCann had been quoted as saying that he had tried to murder her by giving her whiskey and laudanum.

"The story is so foolish I can only laugh at it," he said.

MONEY TO BE WITHHELD.

A. C. Davis, lawyer for Mrs. McCann served notice on Sheriff Hencken yesterday that he did not want him to give Barrington any more of the money taken from him when he was arrested. Davis claimed that the money belonged to McCann. This order, if complied with, will go hard with the "lord." Up to date he has been securing his meals from outside the jail. Hereafter he will probably have to put up with the fare given to less noted prisoners.

A man giving his name as Major R. J. Yates, one time member of the British army, called at the jail yesterday morning and asked to

see Barrington. He was refused permission. The Major said if he could identify Barrington as a certain man he would employ counsel to defend him. The Clayton officials did not concern themselves much about Yates and could give no information regarding him. His name does not appear in the city directory.

UNDERWEAR FOUND.

319 Late last evening a suit of heavy fleece-lined underwear was turned over to Sheriff Hencken. It had been found five miles from Wellston, near the St. Charles Railroad track. McCann wore summer undergarments when he disappeared. A half dozen searching parties explored the fields between Wellston and the stone quarry yesterday, hoping to find McCann's clothing. At a late hour last night success had not crowned their efforts. It is still believed that the clothing lies at the bottom of the quarry.

DRAINING QUARRY POND IN SEARCH OF CLOTHES.

The search for additional evidence in the McCann murder case continued all yesterday at the scene of the crime. Deputy Sheriff J. W. Bellairs and John P. Ossenfort spent the entire day at Bonfils with a force of men dredging the pond in which McCann's body was found, in a fruitless effort to find the dead man's clothing.

The pond was dragged from one end to the other with grappling hooks by two men in a boat, but nothing was found. Deputy Sheriff Bellairs, however, firmly believes that McCann's clothes were thrown into the pond by his murderer and will not give up the search.

WILL DRAIN POND.

Late yesterday evening he decided to drain the pond, and employed a number of farmers in the neighborhood and set them to work pumping the water out with a hand pump. A steam pump was also located on a farm a mile north of Bonfils, which will be put in position this morning, and a Clayton fire engine will be sent out to-day. It is expected that the pond can be entirely emptied by to-night. The only articles of the dead man's clothes so far located are his shoes, one cuff, and a sock. The sock was found by Constable Fred Lentz yesterday near the point where the shoes were found.

WOMEN VISIT SCENE.

Many curiosity seekers visited the scene of the crime yesterday, among them a few women. Men sent out from the city by Police Captain McNamee, of the mounted district, rendered
320 valuable assistance to the county officers, and returned towards the city by way of the St. Charles Rock road as far as Pattonville, where Barrington was first seen on the tracks of the St. Louis, St. Charles and Western Railway the morning of the murder, to make a thorough search in that direction for the missing clothes.

SHOE DEALER HAS A NEW BARRINGTON STORY.

Frank A. Davis, who keeps a shoe store at 908 Taylor avenue, thinks that Barrington called at his place and changed clothing there about four weeks ago. The clothing was brought to him by a woman who the stranger called his wife and who answers the description, Davis declared, of Mrs. McCann. Davis was taken to the 10th district police station yesterday, and from among a number of pictures selected Barrington's as being the one of his mysterious visitor.

Mr. Davis stated that the stranger came to his store about nine o'clock, saying he had been in the North for about six months, had returned that morning, and wanted to put on a suit of lighter clothes which his wife would bring to him. He was a very gentlemanly sort of a person, Davis says, and his request was granted.

The man waited nervously for twenty minutes, when the woman arrived, bringing the clothing in a pasteboard. In was a light summer suit and a new straw hat.

After making the change the man and woman left together. The man returned in the evening, Davis says, and got the old clothes. Mr. Davis says he could not decipher the name on the box, but that it was not Barrington.

GROCERY CLERK BELIEVES HE SAW BARRINGTON.

Henry Taylor, who drives a delivery wagon for grocer Busche, of Bonfils, stated yesterday that he was stopped Thursday afternoon by three men near the scene of the McCann murder. One of the men, he says, resembled Barrington and the two others were younger, perhaps not over nineteen or twenty years. The man who resembled Barrington asked him about a good place to fish and offered him a drink of whiskey from a flask, which the boy refused.

321

Taylor also said he drove to the city the following morning and on his way passed a man walking towards the city near the tracks of the St. Louis, St. Charles and Western Railway. The man, he said, was walking very slowly with his head down, and he wondered why he did not get on the cars. Taylor says the man was not a tramp, although he was very much bedraggled and dirty and looked as though he had slept out all night.

Taylor was subpœnaed by Deputy Sheriff Ossenfort to appear at the coroner's inquest at Clayton to-morrow, and his testimony is considered important.

PRISONER SUGGESTS CHARGING ADMISSION.

Sheriff Hencken, of St. Louis County, received a suggestion from Barrington yesterday that showed the mercenary spirit of the man.

Monday several hundred men and women were admitted to the jail to look at Barrington. They were coming and going all day long.

Yesterday Barrington suggested to the sheriff that a nice sum could be realized if the sheriff would, in the future, require a $1 fee from all those who wanted to see the alleged murderer of McCann. Mr. Hencken did not adopt the idea.

PRELIMINARY HEARING ON WEDNESDAY NEXT.

Justice of the Peace I. W. Campbell, of De Hodiamont, before whom Barrington will be arraigned for his preliminary hearing, expressed the belief yesterday that the defendant would refuse to make a statement after hearing the State's evidence. Justice Campbell thinks that Barrington does not realize the strength of the circumstantial evidence that has been accumulated against him ever since McCann's body was found.

The hearing will be one week from to-day in the court-house at Clayton.

322 BARRINGTON'S GROWING BEARD WORRIES HIM.

Barington's beard is worrying him. It is getting long. The bogus lord has not been shaved since last Saturday. Accustomed, as he has been, to shaving daily, the unusual growth of whiskers is a source of great mental irritation. He grieved silently over the absence of a razor and mug or the presence of a barber until last evening, when he appealed to the sheriff to end his misery by allowing him to be shaved. The sheriff agrees to admit a barber to the jail to-day.

BOGUS LORD OBJECTS TO WORDING OF WARRANT.

When Deputy Sheriff Bellairs read the second warrant to Barrington, charging him with the murder of McCann, and which was sworn to by Coroner Koch, the prisoner wanted to know how Koch could swear to such a charge.

"Koch does not know that I killed McCann," said Barrington. "He did not see the killing, and he swears to something he knows nothing about."

Q. What do you find on page 86, Mr. Altheimer?

A. I find a clipping from the St. Louis Republic, paper of general circulation in the city of St. Louis, clipping of July 1st.

Mr. GROVER. I offer the two columns on the left only.

(This offer is in words and figures as follows:)

CRIMINAL LAWYER THINKS M'CANN MURDER A HOAX.

G. H. Merritt believes that a fake crime was planned by Barrington, McCann, and other persons as a money-making scheme and thinks that the man supposed to have been killed will appear at a prearranged time.

G. H. Merritt, who has had much experience as a criminal lawyer in California and who is now an agent for Scribner's Magazine, with

offices in the De Soto Building, advances the theory that the McCann murder is a gigantic hoax.

He thinks that Barrington, McCann, Mrs. McCann, and possibly three or four other persons are interested in the "fake."

In Merritt's opinion, McCann will turn up at the proper
323 time, after the evidence has practically convicted Barrington of the crime.

As a motive for the "fake" murder, Mr. Merritt says that it is his belief that McCann and Barrington have some scheme in prospect that will be materially enhanced in value by widespread notoriety.

Mr. Merritt thinks that the several pieces of circumstantial evidence dovetail too nicely not to have been arranged by shrewd and unscrupulous men.

From the view of a close student of human nature and an experienced criminologist, Mr. Merritt analyzes the case as follows:

"There is an old axiom of detectives and criminal lawyers the truth of which has been often proven, that involving the problem of a crime, unless the motive is clearly established and all of the facts are known, look for the improbable instead of the probable.

"A criminal usually makes his plans so that suspicion is directed away from instead of towards him. This would be true of a novice in crime.

"Barrington, it is said, is not a novice. The police allege that he has had many years of practical experience regarding detective methods and criminal procedure.

BARRINGTON PLANNED TRAIL FOR HIMSELF.

"If Barrington planned and committed this crime, he as carefully planned to leave a blazed trail which would lead directly to him as the murderer.

"According to my theory of the case, it would be of vital importance that Barrington and no other person be arrested for the crime. Otherwise the plans would all miscar'y.

"The motive of this hoax, as I am convinced the McCann murder will ultimately prove, is money.

"Persons who have no legitimate business, and yet wish to use large sums of money, will plan various and of'times queer methods of securing it.

324 "When Barrington was released from the workhouse he was broke. A saloonkeeper, relying on the curiosity of the public, concluded that by engaging Barrington he would vastly increase his trade. The theory proved correct.

"In time, however, Barrington as a novelty paled upon the public palate and the bogus 'lord' was discharged.

"McCann is a stranger in St. Louis. He is a 'good fellow,' a gambler, race-track better, a money getter, and a money spender.

"McCann's affairs became tangled and it was necessary for him to raise a large sum of money.

"He deduced that as Barrington as a workhouse character attracted popular attention, Barrington as a murderer would prove a much more desirable drawing card.

"When this view of the proposed plan was submitted to Barrington, and the possibilities pointed out, he was in favor of gulling the public into a burlesque murder.

EASY TO SECURE A DEAD BODY.

"It would be an easy matter to secure a dead body in general appearance resembling McCann, cart it out to Bonfils, and lay the preliminary steps for the murder.

"On the night that the murder is supposed to have been committed Barrington and McCann went to Bonfils. The features of the dead man were slashed with a razor and disfigured, a couple of bullets were shot into the skull, and evidence pointing to Barrington was scattered thick in the vicinity of the place where the body was carelessly concealed.

"A rock, of which there were many in close proximity to where the murder was committed, would have effectually sunk the dead body to the bottom of the pool, had such been desired.

"In fact, a child would have been able to obliterate traces of the crime in a much more effective manner than did the supposed murderer of Jim McCann.

"At the proper time I believe that McCann will come for-
325 ward, suffering apparently from the effects of a protracted spree, and, of course, Barrington will be liberated.

"A saloon, a morbidly curious public, and the fortunes of the pair of plotters are made."

Q. What do you find on page 87, Mr. Altheimer?

A. I find a clipping from the St. Louis Chronicle of circulation of July 1st, 1903—paper of general circulation in the city of St. Louis.

Mr. GROVER. We offer this in evidence.

(This offer is in words and figures as follows:)

BARRINGTON WANTED M'CANN'S BODY EXHUMED—"I SUPPOSE I MUST HANG," HE SAID WHEN DENIED.

Inquest will reopen at Clayton Thursday, and bogus lord protests the identification is false—He is recovering his repose, and denies his guilt with more emphasis than ever.

"I want that body exhumed and a more minute examination made," said Frederick Seymour Barrington to Sheriff Hencken Wednesday morning when he was told that the inquest on McCann's remains was to be reopened Thursday at the court-house in Clayton. He was informed that such a proceeding was out of the question,

because the body was so badly decomposed as to render a second examination impossible.

"Then I suppose I must hang," he continued, with some show of desperation, "simply because Mrs. McCann identified the body by a peculiarly formed gold tooth. Such an identification is absurd. Other men have gold teeth. Other men have the same size physiques and contours. It's a pretty tough proposition when a man's life hangs by a thread—simply on one excited woman's statement."

Barrington was vehement. He showed more bravado than he did the day before; in fact, looked more like the bridegroom of six months ago than at any time since his incarceration on the murder
326 charge. He has been freshly shaven, after repeatedly requesting it, and he had on an immaculately white shirt, and wore the vest and trousers of his faultlessly fitting Prince Albert suit. There was an expression of determination and confidence in his eyes not seen there at any time before since he arrived at Clayton and was placed in Sheriff Hencken's charge. In fact, he was considerably changed for the better, having evidently rallied entirely from the collapse with which he was threatened Monday, when it was generally believed that he would confess before the day was over.

"All the evidence is against you, Barrington," said a representative of the Chronicle Wednesday. "You had better make a clean breast of this whole affair and present the fight you are going to make, if any, showing what cause you had for murdering McCann."

Barrington laughed. It was the cold, metallic laugh of the cynic one without money or friends.

"They are drawing the links tightly around you, Barrington," continued the Chronicle.

The prisoner stood erect. He heaved a deep sigh. His eyes flashed, and he said:

"The tighter they draw the links the greater the mistake will be in the end. Let them go on with their accusations." The prisoner chuckled.

"What do you mean?" he was asked.

"Never mind—never mind. The world will be wiser when it gets through with the case."

He laughed like a fiend. He could not be induced to say anything more along this particular line.

"Have you counsel?" he was asked.

"I haven't and don't want any. I shall plead my own case. I may not even have to do this." Then that strange gleam came into Barrington's eyes again. It is a mysterious expression, as mysterious as the man himself.

"But I must see the body again—I must see it. There is
327 no justice in American laws if I don't," he continued.

Sheriff Hencken informed Barrington at this juncture that Mrs. McCann had served notice upon him to not let the prisoner have

any more of the money that was found on his person at the time of the arrest.

"What?" he fairly shrieked, "going to even take away what little means I have to feed myself? Do you suppose that I can exist on this jail fare? Do you want to rob me of my constitutional rights as well as liberty? Is there no redress for me?" The prisoner became frantic. He paced up and down the cage like a tortured lion.

"That money does not belong to the McCanns. It is mine, every cent of it. They owe me, instead of my owing them."

The amount involved is only $20, but Sheriff Hencken said that he would be compelled to obey the order. The money will be retained as evidence against Barrington. Hencken assured the prisoner, however, that if he continued tractable he would add desired delicacies to his daily bill of fare. This was not solacing the man. It was the principle of the act that seemed to worry him more than anything else.

Q. What do you find on pages 90 and 91, Mr. Altheimer?

A. I find a statement, or a clipping, from the St. Louis Chronicle, from its edition of July 1st, 1903—paper of general circulation in the city of St. Louis.

Mr. GROVER. The part that I offer here is under the large headlines: "I believe Barrington Lieut. Foley's murderer."

(This offer is in words and figures as follows:)

"I BELIEVE BARRINGTON LIEUT. FOLEY'S MURDERER."—CAPT. W. D. TURNER.

Capt. W. D. Turner, of the Indian Staff Corps, and members of the Junior Army and Navy Club of England, who is doing literary work in St. Louis, says he feels confident that "Lord" Barrington, murderer of James McCann, is none other than the fiendish
328 Barton, who foully murdered Lieut. Foley, his over-indulgent army employer, in India, several years ago.

Yesterday afternoon Turner visited Barrington in the jail at Clayton at the solicitation of Sheriff Hencken.

Capt. Turner asked Barrington how long he had been in the English army service. The "lord" grew suspicious after stating that he belonged to both the English and Indian service and would not answer this question. He also said he would reserve the right to answer any question he saw fit. He declined to give the number of his regiment and then denied that he had ever been in the Indian service.

"You misunderstood me," said the suave Barrington to Capt. Turner, with that soft, purring accent which has won for him many dollars. "I said the Imperial service."

Capt. Turner was positive that he said "Indian," but the "lord" would not have it that way.

"I asked him if he had ever held a commission from the Indian army," said Col. Turner to the Chronicle. "Barrington studied a

moment and then said that he once held such a commission. When I asked him to name some of the officers with the Imperial Guards the foxy prisoner declined.

"From his conversation I think Barrington must have been an enlisted man, given the position of lackey by an officer, probably the ill-fated Foley, where he learned what he knows of army life and became acquainted with the leading people, thereby gaining considerable knowledge.

"I asked Barrington why he did not interest the English Government in his behalf if he is innocent, as he claims. He replied very quickly that the Government would be too slow taking up such a case, besides he would not dare to take this step, as he is under a serious charge in England. Then, seeing that he had made a dangerous admission, he tried to laugh the matter off."

Q. What do you find on page 104 of the scrapbook, Mr. Altheimer?

329 A. I find the St. Louis Globe-Democrat of July 2nd—a clipping from that paper, which is a paper of general circulation in the city of St. Louis.

Mr. GROVER. The part that I offer here is a piece of about an inch and a half long under this title: "Gazes on gallows while being shaved."

(This article is in words and figures as follows:)

GAZES ON GALLOWS WHILE BEING SHAVED.

The bogus lord yesterday received his first shave since his arrest in the Clayton jail. Barber J. L. Lalumondiere reclined him in a common chair on the floor of the "Bridge of Sighs," connecting the jail with the court-house.

Barrington's position forced him to gaze upon the hangman's gallows, but he made no comment on the situation. Jailer Jacob Roth stood close enough to prevent any effort at snatching the razor and using it as a weapon.

Q. What do you find on page 105 of the scrapbook, Mr. Altheimer?

A. On page 105 I find a clipping from the St. Louis Chronicle, dated July 2nd, 1903.

Mr. GROVER. I offer only the headlines of this article.

(This offer is in words and figures as follows:)

"New witness adds to chain around Barrington—The mysterious woman who spoke to McCann on the car night of murder found and identified the 'lord.'"

Q. What do you find on page 105, Mr. Altheimer?

A. I find a clipping from the St. Louis Chronicle, dated July 3, 1903. A St. Louis daily newspaper—general circulation.

Mr. GROVER. I offer the last three columns under the heading:

MY FRIEND, THE HYPNOTIST, PROVES THAT BARRINGTON IS INNOCENT OF MURDER—BARRINGTON TELLS ME, WHEN I ASK HIM, HOW M'CANN KILLED HIMSELF AND THEN JUMPED INTO THE POND.

"You may have observed some of the pictures in the newspapers," said my friend the hypnotist, "that there is not one
330 sign of degeneracy in Barrington's features."

"Who said there was?" I asked, a trifle testily, for I am not overfond of reading of battle, murder, and sudden deaths, and the newspaper accounts of Barrington and the McCann murder were beginning to weary me. But the hypnotist refused to be annoyed.

"No one," he replied, "no one. I was only about to remark that if the detectives would pay less attention to doubtful clews and more attention to Barrington's face and the shape of his head he would save them a lot of trouble by telling them the whole truth. The physiognomy is the only true index to the soul."

"True index of your grandmother!" I snorted, for, as I have frequently stated, I hate to be gulled.

"Stop raving and consider the matter reasonably," the hypnotist queerly observed. "Note, if you please, this picture," and he spread before me a newspaper containing a half tone of the "bogus lord." "Note the straight nose, they eyes set far apart, and calm and intelligent. Observe the chin, square, strong, and firm. Self-poise is seen in every feature; but look again. Is there no pride and stubbornness and cunning of a high order?"

"Well," I asked, "what are you driving at?"

"Just this: Noble blood flows in Barrington's veins. Driven by family pride and straightened circumstances he seeks a marriage de convenience in this country. The heiress whom he marries fails (pardon the slang) to deliver the goods. The legality, the very existence of his title is questioned in the public prints. His wife's brother punches his head, and to cap the climax he is thrown into prison for disturbing the peace in that he had his head punched.

"Picture the frame of mind of this English aristocrat. Yet he suffers in silence. The English are a phlegmatic people.

"Finally he is released and meets the turfman, Jim McCann, and his wife. The truth of the death of McCann, if he is dead,
331 which Lord Barrington denies, I do not profess to know. But Barrington may know, and if he knows he will tell if properly approached. So far he has been sweated, bullied, and cajoled, and his blue-blood spirit revolts. Meet him as man to man, treat him with the respect which his rank entitles him to, and, believe me, he will unbosom himself. His face tells me so."

"You are a wonderful man," said I, with fine sarcasm. "You have never seen Barrington, yet you sit there quietly and tell how to unravel a tangle that is puzzling the heads of Desmond and all his detectives. I marvel and admire."

The hypnotist kept his temper wonderfully. "Detectives," he said, "are all of one school. They have no originality. They visit the scene of a crime, look wise, pick up a bloody shirt and a beer check, and then call in the reporters. Next they arrest the first suspicious character they can find and try to scare him into a confession. Faugh! The simplest way is the best nine times out of ten. Ask Barrington for the truth and you will get it."

"Barrington is a liar," said I.

"Barrington is an English gentleman."

"He would not tell the truth."

"He would. I know for a certainty that—Ah, Lord Barrington, how-de-do."

The hypnotist seemed to be looking right through me at some one behind, and, whirling around, I saw the bogus lord. Then I realized to my utter amazement that I was in a cell in the Clayton jail with a murderer for a companion.

Barrington was clean shaven and immaculately dressed. He did not seem surprised to see me, but I put it down for the steely veneer of indifference which in England passes for good manners.

"I couldn't help overhearing what you were saying," he said, as he motioned me into a chair with a manner as grand as he could have used had he been receiving me in his moss-grown castle in England. "I hope you will pardon me. And I wish"—here he
332 hesitated as if he found his subject delicate—"I wish I could persuade you that I am not wholly bad."

"I do not wish to judge anyone hastily, Lord Barrington," said I, in as friendly a manner as I could assume. "Were I in your place I would wish you to judge me fairly. Perhaps you have been wronged. Tell me, Lord Barrington, as man to man, how did Jim McCann die?"

The abrupt question startled him. He sprang to his feet and paced the narrow confines of the cell. When at last he halted and faced me there were tears in his eyes.

"Dear boy," he cried, "you must overlook this display of emotion. I have borne much. They have bullied, threatened, abused me—me in whose veins royal blood flows—but I did not complain. Circumstances were against me. No one believed me, anyway; so I lied. I concocted one lie after another. But you treat me decently, dontcher know; as decently as a Yankee knows how to treat one of royal birth. So I will tell you the truth. Listen!

"Jim McCann was my best friend. On the night he died we took a car and got off at Bonfils. The stone quarry is a secluded spot and we wanted to have a quiet game of pinochle.

"There was a woman on the car—a good woman, a missionary—who gave Jim some tracts which told all about the wrath to come. Jim had always been a rounder, dontcher know, and those tracts got on his nerves.

"When we reached the stone quarry, Jim said: 'Barrington, I've been a bad one. I'm going to commit suicide.'

"'Don't do it, Jim,' said I. Then he pulled a revolver from one pocket and a razor from another and began to kill himself. When he was quite dead he removed his clothing, hid them, and sprang into the stagnant pool and sank from sight."

With a glad cry I threw myself on Barrington's neck. "Much abused man, the authorities should know this," I told him.

"Oh, come," said the hypnotist, snapping his fingers. "Oh,
333 come; you're all right. You're all right; come out of it."

Mr. GROVER. I also offer, on the same page, the portions of the article in the second column under the headings: "His beard must grow," and "Mrs. McCann testifies."

(This offer is in words and figures as follows.)

HIS BEARD MUST GROW.

Sheriff Hencken says that he proposes to establish Barrington's identity before he gets through with him by depriving him of barber service.

"I want his whiskers to grow in the style worn by him when he was known as Barton or Burgoyne in England," the sheriff declares. "No barber need apply to Barrington while he is in my custody."

Capt. W. D. Turner, formerly of the Indian service, who thought he had seen Barrington in the British army and believes that Barrington murdered Lieut. Robey, went to Clayton to confer with the authorities Thursday relating to securing photographs of the prisoner to be sent to the British Government for identification. He is now confident that Barrington is Barton and Burgoyne.

MRS. M'CANN TESTIFIES.

Mrs. McCann, widow of the murdered man, went on the witness stand at the afternoon session. Her story was that which she has told to the press and which she told at the first inquest. She testified that she had positively identified the body. When asked her means of identification she replied that the general shape of the figure, the slope of the shoulders, the prominent upper teeth, and certain marks on the body convinced her that the dead man was her husband.

Wm. J. Johnston, an employee of the Swope Shoe Co., the first witness of the afternoon, identified the shoes which were found near the scene of the murder as greatly resembling, in his mind, a pair which he sold McCann in the latter part of May.

334 Banj. T. Hume, a brother-in-law of McCann, testified that he had positively identified the body as that of McCann. He identified the body by the same means which led to the identification by Mrs. McCann.

Q. What do you find on page 116, Mr. Altheimer?

A. A clipping from the St. Louis World of July 2, 1903.

Mr. GROVER. I offer simply the headlines of that article. They read:

"DON'T FORGET TO PRAY FOR ME," WERE JIM M'CANN'S LAST WORDS ON EARTH.

New and important witness discovered in murder case—Says McCann was sober and Barrington was drunk while on street car on way to scene of tragedy—Message received by police that McCann was in city and alive proved to be a fake.

Q. What do you find on pages 118 and 119, Mr. Altheimer?
A. A clipping from the St. Louis Republic, July 2, 1903.
Mr. GROVER. I offer the whole article.
(This offer is in words and figures as follows:)

FOOTPRINTS TELL MOVEMENTS OF JIM M'CANN'S ASSASSIN.

Clear impress of shoes near scene of crime correspond with Barrington's footgear and are a damaging circumstance against him—Finding of section of suspender adds link to the evidence, showing actions of victim and his assailant—Fire engine may be used to drain the quarry pond.

Footprints in the soft clay within 100 feet of the quarry in which James P. McCann's body was found were discovered yesterday by Deputy Sheriff Bellairs are believed to be an incriminating circumstance against "Lord" Barrington and to indicate very decisively the movements of the murderer on the night of June 18, when McCann disappeared.

These footprints fit the shoe of Barrington. Yet in jail at Clayton Barrington's recital of his movements in the neighborhood of the quarry do not bring him near the place where the imprints in the clay were found.

335 Though he has refused to reveal in full his version of what transpired at Bonfils, or at the quarry, he has stated that, by the men who attacked McCann, he was struck and stunned. He said that he fell beside a large tree on the south side of the quarry, which is exactly on the side opposite to that on which the clear impress of shoes corresponding to his have come to light.

The prints in the mud satisfy County Sheriff Hencken and his deputies that McCann's clothes are in the quarry pond. Consequently this will be drained. A stationary engine from a threshing machine was taken to Bonfils yesterday, but it broke down and was not powerful enough for the work.

A St. Louis fire engine has been asked for, and J. D. Houseman, of the St. Louis, St. Charles and Western road, has volunteered to run a flat car out to Bonfils from Wellston with the engine. If this is done the water can quickly be pumped out.

EXACT SPOT OF MURDER HAS NOT BEEN DETERMINED.

The exact spot at which the murder was committed has been conjecture, and also the place in the thick bushes which surrounds the quarry, down which the body of the murdered man was rolled. But the places where McCann's pocketbook and the pistol cartridges were located seems to show where the horseman was killed.

The finding yesterday of a part of a suspender, that part which slips through the suspender proper and buttons to the trousers, is a clew to the place where the clothing was disposed of. Broken twigs and small branches indicate further where the body was thrown in.

Weaving all these facts, minor ones in themselves, and considering the footprints found yesterday, a very reasonable deduction follows of precisely the movements of the murderer of McCann at the scene of the crime.

Taussig avenue, along which McCann and Barrington walked north after leaving the car at 11 p. m. compared with an ordi-
336 nary road, is a deserted thoroughfare. But immediately at the car station are two houses; then further north 300 feet from the quarry in the home of Herman Lang. Consequently, out in the open of a street the man plotting murder would be more exposed than if he could get away from the open.

On the east the quarry abuts Taussig avenue. But north of the quarry a well-defined path leads from the road through bushes and along the quarry's northern brink. Reaching this path Barrington, plausibly, could have said to McCann:

"Here is the way to my friend's house"—they were to visit a "friend," it will be remembered. Having gone through the bushes, they would be in an open spot, which is as lonely a place as is in St. Louis County.

LANG SAYS BARRINGTON VISITED THE SPOT.

Herman Lang, the farmer mentioned above, strengthened the evidence yesterday to the effect that Barrington had visited this spot and knew it well. He says that he saw Barrington June 13, five days before the murder, walking along Taussig avenue, near the quarry, and thinks that he saw him go into the bushes near the scene of the murder. Consequently Barrington would have known that it would be safer to lead a victim into the seclusion behind the cloak of trees.

In this open was found the pocketbook. Here also, before curious visitors to the scene trampled away all marks, were evidences of a scuffle. Consequently, fifty feet in from the road, surrounded on all points of the compass by thick bushes and trees, the police think the murder was committed. First cut with the razor, then shot, McCann, taken by surprise, could not have moved far. The probabilities are that he fell in his tracks.

The obvious deduction is that the pocketbook fell out in the struggle, since Barrington had the watch and diamond ring. He must then, because he robbed to this extent, have searched for other things. Certainly, if he had found the pocketbook, even
337 though it were empty and he desired to throw it away, he would not leave it where it could easily be discovered as a clew. Hence, aside from the natural surroundings which made this place a safe and secluded spot for a crime, the presence of the pocketbook is taken as a sure indication of where the deed was committed.

The assassin's next step, clearly, was the disposal of the weapons used, the clothing, and the body. The razor handle found lay 100 feet away from the open place. Hence it must have been thrown. The cartridges were about 40 feet in another direction. The murderer must have walked this distance with the smoking pistol, then thrown out the cartridges.

MUST HAVE DROPPED CARTRIDGES WHILE NERVOUS.

Perhaps he allowed them to fall where they might be found, because he was nervous after the murder, and was peering about to see if anyone was stirring in the Lang house, which is the nearest abode, and was not calm enough to take the precaution to throw the cartridges into the pool.

Then he must have turned to the grewsome work of stripping the corpse. This done, the presence of the footprints, the police think, show that he first removed the body. It was a matter of but twenty to drag this to the point on the steep quarry bank, down which the body is believed to have rolled. Given a push, the hacked remains of James P. McCann broke through the bushes and splashed into the dark, stagnant pool.

This pond is absolutely stagnant, hence the body could not have drifted in it. The nibbling of turtles may have stirred it somewhat, but to no great extent. Since it was found just below the places where the bushes were broken, this is additional evidence that the spot selected is where it was plunged into the water.

About 100 feet from the scene of the crime a thick screen of the bushes separates the open spot from a wide field, which was overflowed during the recent flood. When the murder was committed the water was still over the field. Through the screen of
338 bushes yet is to be seen the broken twigs and scattered underbrush which marks the progress of a man. Once through the bushes he would have been on the edge of the water. The footprints now exposed are proof that he waded into the flood.

The prints lead out into the flood thirty feet, where, as the level of the land gradually became lower, the water became deeper, and he turned back, in a line oblique to that in which he started out. Why should he have waded into the water? He would not have carried the body that far, and he could not have gotten through the bushes with the corpse without breaking the underbrush much more than he did. Plainly he was planning the disposition of the clothes.

CLOTHES NOT THROWN INTO THE FLOOD.

But he did not throw the clothes in here. Had he done so they now could be found, since the water is down. He decided against leaving them in the field, and when he turned back obliquely, as described, he still carried McCann's clothes.

The finding of the bit of suspender is taken as demonstrating that he finally decided to throw the clothing, after the body, into the pond, which was much the safer place to hide them. The little section of a man's attire hung over a twig within ten feet of the place where the body is thought to have been thrown in. The theory is, therefore, that the clothes were wrapped in the suspenders, a stone attached to them, and they were then pitched into the middle of the quarry pond; but that, as this was done, the loose piece of suspender fell away and was caught on the twig.

There are the reasons which render the authorities certain that the clothing is in the quarry and is behind the determination to pump out the water.

The finding of the shoes, the bloody cuff, and a sock of McCann's last week a hundred yards from the quarry, near the Bonfils, St. Louis, St. Charles and Western station are reasons to think that he carried all the clothing with him and buried the bundle somewhere along the track.

339 But the county officers are sure that the shoes were first taken with the intention of keeping them, and likewise the socks, but the danger was recognized and they were thrown away. The cuff is regarded as dropped because of the blood stains on it.

ORIGINAL "SHERLOCK HOLMES'" PUPIL LOOKS FOR ACCOMPLICE.

Doctor William Smith, who was a schoolmate of Conan Doyle under Professor Bell, at Edinburgh, says Barrington had an assistant if he murdered McCann—Analyzes the crime—Knows the accused.

"Barrington had an accomplice if he murdered McCann," says Doctor William Smith, of No. 3949 Washington boulevard, a schoolmate of Doctor A. Conan Doyle, author of the "Sherlock Holmes" tales.

Doctor Smith and Doyle were favorite pupils of Professor Joseph Bell, the man who is said to have trained Doyle's wonderful power for deduction. Bell was taken by the novelist for his hero; he was the original Sherlock Holmes.

Doctor Smith was in his junior year at Edinburgh University when Doyle was a senior, but they met in class frequently during lectures, and became quite intimate.

They were fellow admirers of Professor Bell, who was a profound student of all things pertaining to criminology, and often after class hours the three would sit together and discuss criminal acts of the day.

From newspaper accounts Professor Bell would unravel knotty points for the benefit of his students, and his theories many times turned out to be precisely correct. So enthused did Doyle become in the study that he molded his tutor into the person of "Sherlock Holmes" and won himself fame and fortune.

BARRINGTON A COWARD.

Doctor Smith met Barrington through a patient, J. W. L. Gillespie. From what Dr. Smith learned of the character of Barrington prior to the McCann murder he feels quite safe in saying that
340 the "lord" would not tackle a man of McCann's size alone.

"His effeminacy alone would forbid that," he declared, "and, besides, he is an abject coward.

"He does not squeal on a comrade in the deal at present, because to bring another into the case would not suit his purpose. It would virtually be a confession of complicity in the one act—the killing—which is the only thing he has not confessed he was a party to.

"Barrington knows that he can control his own mouth to suit his own ends so long as he is the only one suspected, and as long as the chain of circumstantial evidence is so strong against him it is the wisest thing to do.

"Barrington has said that he will spring a sensation. I believe that he will, but not until he gets to the last ditch. When the sensation does come it will be the accomplice, and Barrington will loom up in the character of decoy, which I firmly believe he was.

"From what I have read of the case, I think the attack made upon McCann was begun with a razor. Anyone that knows Barrington knows that he would be the last one to start a fight in that manner, for the reason that it permits of too much chance to retaliate before the fatal moment arrives, and in a struggle the attacker would, in all probability, if his antagonist were a powerful man like McCann, be worsted."

Doctor Smith, while he has not become famous as a deducer, remembers the days he spent with Doctors Doyle and Bell, and every murder case that puzzles the police department recalls his college experience.

The McCann murder especially has interested him from the fact that he knew Barrington well. He took special delight in proving the bogus "lord" a prevaricator on every occasion.

"A man to kill another quickly with a blade must know how to use
one. That the party that used the razor on McCann did not know how to use it is shown by two things: First, because a revolver
341 had to be resorted to, and, second, because if they had used the knife in a proper manner after the victim had been dispatched, the corpse would not have come to the surface of the water, and the murderer would now be walking about the streets a free man.

THEORY OF THE CRIME.

"My theory is this," continued Doctor Smith. "McCann was met by a man, razor in hand, who began a quarrel. That man perhaps went out on a car ahead. He figured that McCann would be under the influence of liquor and he would cut his throat.

"From the description printed of the bullet wounds I believe the shots were fired in this manner. Had McCann been killed without resorting to razor cuts, I should believe thatt Barrington alone is guilty, but I can not reconcile myself to the idea that he would engage a powerful man in battle, neither do I see the necessity for making razor slits upon the hands and neck of a victim after he is dead. A murderer wishes to get away from the scene of his work as soon as possible. A few cuts could not disguise a man.

342 WERE SPOILS DIVIDED?

"It will now be seen how a man who had taken no part in the struggles became bloody. He could have helped to undress the dead form and during that process became besmeared.

"McCann, who generally carried a great deal of money, was that night supposed to have less than $5. Whatever he had was taken. It was divided. Some of it has already turned up.

"Where is the diamond stud? It was the most valuable thing McCann possessed. Did the other fellow get it as half the booty? I am inclined to think so. Why was the Suburban Garden cock-and-bull story gotten up by Barrington? Merely to prove an alibi.

"How was he to prove he was at the garden? He had to have something to show. He had his picture taken with McCann, and it is not strange that this was the first thing he gave to McCann's wife after his return.

"The murder was a cleverly planned one, and I dare say that had the body not come to the surface it would not have been discovered so soon, for the police, to all appearance, believed Barrington's story of the disappearance and turned him loose after the first arrest.

"The prime motive, I think, was to get to the money which Mrs. McCann had access to. The means by which I think Barrington wished to get it was by poisoning the wife's mind against her spouse. He invented the tale about the woman, and I believe would liked to have Mrs. McCann believe she was deserted.

"Barrington is very vainglorious. It is one of his characteristics to believe he can gain the affections of any woman.

"Mrs. McCann's actions, however, made him change his tactics. He needed ready cash. He would not seek to get rid of the watch or ring because of fear. Mrs. McCann became so upset even-
343 tually that he was forced to try to quiet her with promises that McCann would return.

"Her actions soon showed that he was not going to succeed with her as he had anticipated. Necessarily he was forced to seek other means

to get money. Then the telephone scheme was born. A message, supposed to be from McCann, asked for $300. Barrington volunteered to carry the money. Mrs. McCann was too shrewd, however, and consulted her attorney. This act exposed the crime."

MRS. M'CANN WROTE TO HUSBAND AFTER HIS DEATH.

It was ascertained yesterday, through postal authorities, that Mrs. James P. McCann, under the name of Leland, which she uses in business, addressed two letters from a Broadway substation to her husband four days after the latter disappeared.

The matter was explained last night by Mrs. Evans, a sister of Mrs. McCann, who declared her sister had sent the letters to places where Barrington declared her husband would stop.

The letters, which were sent on June 22, were addressed to Centralia and Vandalia, Ill., respectively. Barrington had suggested sending letters with money, but Mrs. McCann decided to try plain registered letters in order to see if she would get an answer from her husband.

Both letters have been returned to St. Louis.

DETECTIVE FINDS WOMAN WHO PRAYED FOR M'CANN.

Mrs. Gertrude A. Williams, a missionary, says she spoke to Barrington and McCann in a St. Charles and Western car on the night of June 18—Thinks murdered man was not intoxicated, but
344 that the bogus "lord" appeared nervous—Claims McCann said he was going to Bonfils on business.

Mrs. Gertrude A. Williams, of No. 2335 Randolph street, was the woman who told James P. McCann that she would pray for him the night he was murdered.

Detective John Finan found Mrs. Williams yesterday afternoon. He had been searching for her since Sunday, having been told by Conductor Oellien and Motorman Ike [illegible]nett, of the St. Louis, St. Charles and Western Railway that McCann had conversed with a woman while on the car going to Bonfils with Barrington on the night of June 18.

Mrs. Williams went to the Four Courts and made a statement to Chief of Detectives Desmond and A. C. Davis, attorney for Mrs. McCann.

Mrs. Williams is a missionary connected with the Van Guard Home, which is holding camp-meeting services at the old Marvin camp grounds, half a mile west of St. Johns, on the St. Louis, St. Charles and Western road, and a mile this side of Bonfils.

WOMAN POINTED OUT "LORD" BARRINGTON.

"With the Reverend J. F. Beeson, a little negro girl, and Mrs. M. Freer, of Peoria, Ill., I boarded the car at Wellston about 10 o'clock at night. We were going to the Van Guard camp grounds. Mrs. Freer is a cripple and had to be lifted onto the car.

"While I was standing on the platform a woman whom I did not know remarked to me that 'Lord' Barrington was on the car. She pointed him out to me. I had heard of Barrington and looked closely at him.

345 "Barrington was seated in the third seat from the rear of the car, two seats in front of McCann. I took the seat between them. The little negro girl, who was with me, sat near the window, and I had the seat next to the aisle.

"As we sat down the man behind me remarked: 'I'm sorry for that poor woman,' meaning Mrs. Freer, who had to be carried on the car.

"I turned to him and remarked that she needed no sympathy, because she was a Christian. Then I handed him one of our tracts. I believe it was headed, 'The sinner's photograph.' We have several different tracts, and I am not quite sure which one I gave to him. I also handed one to Barrington, who turned around when he heard me speaking to the other man.

M'CANN READ RELIGIOUS TRACT.

"Barrington crumpled the one I handed him and threw it away with a sneer.

"The other man read his closely and remarked: 'That is to the point, isn't it?'

"I said that it was and hoped he was a Christian.

"'No,' he replied, 'I am not; but I was until I was 24 years old. Then I married a worldly woman. I am what is called "a sporting man." I believe in religion. I was well reared. My old grandfather was a minister.'

"He told me that his wife was in Chicago. 'All I want now is excitement,' he said. He was not intoxicated; but Barrington acted strangely and seemed to be nervous.

"'I'm not going out on a racket to-night though,' he said. 'My friend and I are going out to one of the suburbs on business.'

"When the car reached Bonfils he handed me this card. I saw the name was James P. McCann. He said: 'I believe you are a good woman. God bless you.'

"I thanked him and asked him to think of the life he 346 was leading. He said he would come out to our religious meetings if it were not for what his associates would think. I told him such a life would lead him to hell. He said he knew it, but he did not dare let himself think of his life.

PROMISED TO PRAY FOR MURDERED MAN.

"'I'll pray for you to-night,' I said to him, as he got up to leave the car, and we shook hands. He said he hoped I would, and gallantly raised his hat to me.

"God must have given me the opportunity to speak to that poor man on the night he was to be killed. I did pray for him. I could not get him nor his words off my mind. I have thought of him several times since then, but never expected to see him or hear from him again.

"I do not read the newspapers very often, and I have not seen anything about the murder. It was not until to-day that I heard of it.

"Two waiters at the camp were discussing it. I overheard them. They used the names of Barrington and McCann.

"'What are you talking about?' I asked them. *I asked them.*

"'About the big murder case,' one replied. Then I asked him to tell me about it.

"'Why, that is the man I was talking to,' I exclaimed, and I showed them the card Mr. McCann had given me. I told them how I had seen Mr. McCann and Barrington on the street car and all about our conversation."

Mrs. Williams took the card McCann had given her to the Four Courts and turned it over to Chief Desmond. It will be used as evidence against Barrington.

WILL TESTIFY AT PRELIMINARY HEARING.

Several photographs from the rogue's gallery, among them
347 Barrington's, were handed to her for identification. Mrs. Williams readily picked out the picture of Barrington, which was the last she came to, as that of the man she saw on the car.

When it is considered that she has not been reading the papers, and has not seen the published pictures of Barrington, this is regarded by the police as an important point.

"Detective Finan has done good work in finding this woman," remarked Chief Desmond, after he had talked with Mrs. Williams. "She will be one of the most important witnesses for the State against Barrington. There will be no person who will not believe her."

Attorney A. C. Davis agreed with Chief Desmond. "It will be hard for any lawyer who attempts to cross-question that woman," he remarked. "She has a splendid memory and her statement cannot be shaken."

Mrs. Williams stated that she expects to go to India as a missionary before long. She promised, however, to keep in touch with the authorities, and will be a witness at the preliminary hearing next week.

"LORD" BARRINGTON BECOMES AVERSE TO WOMEN VISITORS.

"Lord" Barrington, erstwhile matrimonial adventurer, has taken an aversion to the female sex and refuses to receive them in the jail

at Clayton. Yesterday, when told that a woman was waiting to see him, he hurriedly retreated to the rear of the cell, stating that he did not want to see her.

Late in the afternoon, when another woman gained admission to the jail, he again sought to retreat, but was induced to come out. He would not come any further than the door, however.

Barrington seems disposed to lay the blame for his troubles upon the woman he has known. He is deeply interested in the
348 statements made by Mrs. McCann. He professes not to believe the stories attributed to her, and declares that she is deliberately distorting the facts, if she is correctly quoted.

He says he is anxious to meet her on the witness stand, where he can place his statements against hers, where he can counterbalance the effect of her testimony with the secrets that he hints will come out at the proper time.

FORCED TO EAT PRISON FARE.

Barrington is facing a new predicament, for which he is blaming Mrs. McCann. At her request the $20 he had when arrested has been tied up in the sheriff's hands, thereby stopping the meals that the lord has been getting from a hotel and compelling him to subsist on prison fare.

He regrets that he ever had anything to do with the McCans and says he will not have anything more to do with Jim McCann, if he should happen to bob up, which Barrington thinks he could do if he would. He says he is not indebted to them, but that they are indebted to him.

A new bit of evidence was developed by Deputy Sheriff Jack Bellairs yesterday. He secured a statement from Herman Lang, a farmer at Bonfils, to the effect that he saw Barrington on Taussig avenue on June 13, five days before the murder occurred. Barrington was alone and walked as far south from the railroad tracks as the St. Charles Rock road. He passed the Wabash quarry at least twice and appeared to be making a survey of the country, as he walked leisurely. He was dressed, according to Lang, in a black Prince Albert, wore a silk hat, and carried a walking cane. "I noticed him because I thought he was a preacher."

349 Q. On pages 128 and 129 of the scrapbook what do you find, Mr. Altheimer?

A. A clipping from the St. Louis Globe-Democrat, Friday morning, July 3, 1903.

Mr. GROVER. I offer the head note of article, which is as follows, and also coroner's verdict:

"God must have given me the opportunity to speak to that poor man on the night he was to be killed. I did pray for him. I could not get him nor his words off my mind. I have thought of him several times since then, but never expected to see him or hear from him again.

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"'What are you talking about?' I asked them. *I asked them.*

"'About the big murder case,' one replied. Then I asked him to tell me about it.

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Mr. GROVER. I offer the head note of article, which is as follows, and also coroner's verdict:

BARRINGTON IS HELD FOR M'CANN'S MURDER BY JURY.

Verdict, strong as it could be made, failed to excite prisoner, who said he expected it.

ONE WITNESS HEARD CRIES OF "DON'T KILL ME."

Bogus lord takes down the more important testimony in shorthand.

LAWYER VOLUNTEERS SERVICE.

Widow of murdered man tells straightforward story.—Only looks twice at prisoner—Witnesses' testimony makes strong chain of evidence.

Coroner's verdict.

We, the jury, find that James P. McCann came to his death by felonious wounds, the result of certain cuts and incisions in and upon his chin, cheek, and thumb; also by the infliction of certain gunshot wounds in his head, two bullets having been found—one at the angle of the jaw, the other within the substance of the brain—said cuts and incisions being caused by a razor or other sharp instrument held in the hands of Frederick Seymour Barrington. Said gunshot wounds were caused by leaden bullets fired from a revolving pistol held in the hands of the said Frederick Seymour Barrington. All of said wounds being inflicted in and upon the person of said James P. McCann by the said Frederick Seymour Barrington, on the night of June 18, 1903, near Bonfils Station, in the county of St. Louis and State of Missouri.

Verdict: Homicide.

HERMAN LANG (*Foreman*).
FRANK LEUCK.
ALECK POLLITZACH.
DANIEL NAPPLE.
FRANK GRUENWALD.
DANIEL LEIGHRIGHT.

350 Q. What do you find on page 130, Mr. Altheimer?

A. I find a clipping from the St. Louis Chronicle, July 3, 1903.

Mr. GROVER. I offer the three upper columns in evidence.

(This offer is, in words and figures, as follows:)

TO LET HIS BEARD GROW.

Sheriff will not permit Barrington to shave.—Determined to prove that bogus lord and Barton are one.

Since the McCann inquest at Clayton Thursday, Sheriff Hencken has allowed no one to see Frederick Seymour Barrington, who is held on the charge of murder.

"I think he has been allowed too many visitors already," Hencken said, "and hereafter nobody will be permitted to talk to the prisoner unless it is actually necessary as a business proposition. Crowds of the morbidly curious can not have their desires gratified."

By this order the sheriff does not mean to exclude Barrington's counsel or representatives of the press, but that element which has thronged the jail ever since Barrington was incarcerated, drawn solely by curiosity.

"I will prove inside of a few weeks," said the sheriff, "that this man is none other than Barton or Burgoyne, the noted English crook, who cut such a wide swath in the criminal calendar of England a few years ago. He shall not be shaved again while he is in my custody and with a full beard on his face it will be an easy matter to establish his identity as the English crook."

Barrington is greatly worried over the antishaving order, and reiterates anew that he is being deprived of his constitutional rights.

"Whoever heard of a man being denied the privilege of
351 keeping his face clean?" he exclaimed, when apprised of the order. "It's an outrage, a dirty outrage."

THE LORD MUST LEARN TO EAT BEANS AND BACON.

If he doesn't, he will go hungry unless some one pays for sirloins with mushrooms.

During the lull late Thursday in the McCann inquest at Clayton, "Lord" Barrington chatted with several newspaper men and court deputies.

The rapidity with which the "lord" dashed off shorthand notes of the evidence during the inquest attracted considerable attention. Barrington puts one in mind of an expert magician—always springing some new surprise.

"Where did you pick up shorthand?" inquired a Chronicle reporter.

"Oh, I've known it for a long time," the "lord" replied.

"What system do you follow?"

"My own entirely. I am thoroughly familiar, however, with both Pittman's and Clegg's, but I prefer my own; it is easier, better, and more rapid."

Shorthand experts in court looked at Barrington's notes, but could make very little, if anything, out of them.

"Did you ever do any newspaper work?" asked the reporter.

"Sure," replied the "lord," "I thought you knew that."

"Where?"

"In London."

"In what capacity?"

"War correspondent."

"What war occurred in London, and what paper did you represent?"

352 Barrington moved uneasily in his chair, and, using his stereotyped answer when questioned too closely on one of his lies, replied: "I refuse to state."

The fake lord declined to discuss his case from any standpoint.

"In court is the place to fight these things out," he remarked. "The real big surprise hasn't yet been sprung," he ventured, with apparent deep mysteriousness. "Wait until that time; then there'll be a lot of people opening their eyes wider than they are now."

There is a story at Clayton that Barrington insists on being in the height of fashion, even in a jail cell. It is told of him that he demands, every day or so, a hot laundry iron, with which he keeps the faultless creases in his trousers and his Prince Albert coat smoothed. Sheriff Hencken says the "lord" is too finical in appetite for him, but that he must accustom himself to the regular cuisine of the bastile or go hungry.

"There'll be no more frog legs or tenderloin steak with mushrooms for Barrington unless somebody pays for such delicacies," said Sheriff Hencken to the Chronicle. "His lordship must get used to bacon and beans or go hungry."

Q. What do you find on page 131, Mr. Altheimer?

A. A clipping from the St. Louis World, Friday, July 3, 1903.

Mr. GROVER. I offer merely the headlines of this article.

(This offer is in words and figures as follows:)

BARRINGTON BROKE DOWN AND WEPT LIKE A CHILD AFTER CORONER'S VERDICT.

353 Said there was no reason why he should kill the best friend he ever had—Verdict charges him with homicide—Evidence against him was very strong and decidedly convincing.

Q. What do you find on page 132, Mr. Altheimer?

A. I find a clipping from the St. Louis Chronicle, Saturday, July 4, 1903.

Mr. GROVER. The article offered here is under the heading, "Barrington's quiet Fourth."

(This offer in words and figures as follows:)

BARRINGTON'S QUIET FOURTH—VISITORS WERE DENIED ADMITTANCE TO HIS CELL SATURDAY.

The erstwhile "Lord" Frederick Seymour Barrington spent a solitary Fourth Saturday.

He did not enjoy the visits of several score of curious farmers from the county and visitors from St. Louis and neighboring suburbs, as on the previous days of his incarceration in the Clayton jail.

The Clayton officials decided that it would be better for the "lord" to be undisturbed on Saturday. He has been slightly indisposed, due to his change of diet from quail on toast and delicate puddings to simple bologna sausage and bread.

Q. What do find on page 138, Mr. Altheimer?

A. A clipping from the St. Louis World of July 5th, 1903.

Mr. GROVER. I offer all of this in evidence except the pictures, as follows:

CHIEF DESMOND GIVES VIEWS ON BARRINGTON.

354 The Englishman as casehardened a man as the veteran St. Louis policeman ever ran across.

Chief of Detectives Desmond and all the officers at the Four Courts discussed little last week outside of the Barrington-McCann murder.

It was a week ago yesterday that McCann's body was recovered.

Yesterday Chief Desmond had a chain of evidence against Barington in which there was not a missing link.

All of this proves that Desmond is a rapid thinker and quick mover.

It is just about twenty-five years ago since a tall, wiry, handsome young fellow entered the old third district police station at Third and Carr streets one night at changing time.

The young fellow was Desmond.

It was about his first night on the St. Louis police force.

This district was then known as "The Bloody Third."

Captain Huebler was in command and with him were veteran sergeants like Jenks, Reedy, Sharpenberg, Shore, and other tried and true men.

In the Bloody Third was located "Castle Thunder," "Clabber alley," "Lock's Lime House," "Luck Buck Chute," and "Hell's Half Acre," all loaded down with the toughest of the tough.

Police officers were often beaten up there.

Sometimes they were killed, and one of the best and bravest of the third's men, Sergeant Jenks, was shot down by a black fiend.

The third for years held the toughest of the tough, and only the best men could hold their own there.

355 Desmond, from the beginning, appeared thoroughly satisfied with the situation in "The Bloody Third."

The toughest men within its lines had no terrors for him.

Quick as a cat, lithe of limb, and of natural-born strength, he tackled the toughest characters and got away with them.

Pretty soon he became a terror to the evil doer.

Larry Harrigan was then chief of police of St. Louis. He was known the country over as the "wisest" policeman in America, and this "wise man" picked Desmond out early in the game as first in line for promotion.

First Harrigan stripped the Kerry Patch boy of his uniform, brought him into the Four Courts, and put him to work on the secret service end of the department.

Desmond took to the job as a duck to water, and in no time he made his presence felt. He soon came to be the champion thief catcher of the department. He was so vigorous in pursuit of evil doers that he quickly won the hatred of that class in St. Louis, but with their hatred and all he orged his way to the front until he became the head of the St. Louis detective force.

All of these facts are mentioned to prove that Desmond as a thief catcher and quick judge of criminals has few, if any, equals.

But with all his experience he says that he never yet ran across a stranger criminal, a harder one to fathom or to handle, than this same Barrington.

The World asked Desmond the other day just what he thought of Barrington. He said:

"He has all the marks of a hardened criminal.

"I would pick him out in a crowd as a thief and murderer.

356 "He has all the earmarks of a man who has served time in many prisons.

"He is casehardened.

"You might kick him and cuff him and he has such self-control that he would reply with smiles and honeyed words.

"He reminds me of the automaton with rubber face. You could poke your fingers in its eyes and cheeks and they would bob out again, smooth and unmarked.

"You could do nearly the same thing with Barrington.

"You could smack Barrington on the left jaw and he would turn the other cheek towards you and beg you to hit harder if it only pleased you. That is providing you had him in chancery.

"You could not insult Barrington.

"You could not get him mad.

"You could not arouse his ire either by word or deed.

"That is because he has served so much time in prison that he has made the art of dissembling a business, and he can be anything he choses without reference to the occasion or surroundings.

"He has perfect self-control.

"That is why Gillespie, the saloon keeper, who was his partner, and Miss Cochrane, who was his wife, believe that he is too effeminate and cowardly a man to commit the fearful murder with which he is charged.

"He wore a mask with them.

"The soft words, the effeminate manner, were all put on.

"Beneath the cloak was a cold, calculating villain, who could be ever so soft and fawning, but who, when the occasion demanded, had the nerve and strength of a demon, and who was ready to strike and kill his best friend if the spirit happened to move him in that direction.

"Experience has taught that men who go to prison either become strong as beasts or die.

"Long terms in the penitentiary make or break a man's health.

"If he is bre[illegible]right, if he comes of a healthy father and mother, he stands the str[illegible]n, becomes hard as iron, and comes out of the trial as strong as a trained athlete.

"The continual work hardens the muscles and the sinews, and the convict who has 'stood the gaff' is generally a man of prodigious strength.

"Barrington's long terms in the English prisons, where the tasks are fearful, probably gave him the strength of a tiger, and when it came to a struggle with McCann, the well-fed, soft, and easy-going Kentucky gentleman was no match at all for the tiger-like, case-hardened convict.

357 "To me the murder of McCann is as plain as day.

"The motive was to rob the dead man and subsequently strip the widow.

"I believe that McCann and Barrington were walking side by side at Bonfils, McCann half drunk and in blissful ignorance of what was to happen, and Barrington with a revolver in hand ready to shoot.

"I believe that McCann's first notice of death came as they walked along, Barrington shooting as they walked side by side, the weapon being turned in the direction of McCann's chin.

"The first bullet perhaps caused McCann to fall, and as he fell he perhaps arose again, and seeing Barrington with the revolver pointed at him he shouted as he recovered his senses, 'Oh, please don't shoot.'

"I believe that it was then that Barrington finished his man with another shot.

"The razor, I believe, was used to disfigure the corpse, and the body was then stripped to destroy all chances of its recognition.

"The blood on the back of Barrington's coat came from the carrying of the bloody corpse on his back to the quarry hole.

"The job was altogether well done.

"It was a murder that resembled in many respects the murder of Preller in the Southern Hotel years ago, by Maxwell.

"Maxwell killed Preller just as cautiously as Barrington killed McCann.

"Maxwell gave Preller hypodermic injections of chloroform of sufficient strength to kill.

"Then, to prevent all chance of his victim coming back to life, he locked the body in a trunk.

"When he had done that he fled, supposing that it would be months before his crime was discovered.

358 "Maxwell, like Barrington, forgot that the body of his victim would decay and that the smell would lead to his detection. But that was exactly what happened in both cases.

"Under ordinary circumstances and in cold weather, McCann's body might have laid in that quarry hole until Barrington had gone

to the end of the earth. But it was summer time, and the summer sun, aided by the summer winds, sent the news of the murder broadcast and brought many to the quarry hole to look down upon the corpse that was rotting there and giving mute evidence of the fearful murder that had been done.

"Nature, in fact, was the first to bring both those fearful crimes to light.

"The detective force must aid the county officials to do the rest.

"Already the case is well in hand, and a more perfect chain of circumstantial evidence I have never seen in a murder or any other criminal case.

"I believe this arch fiend will be found guilty of murder in the first degree and hanged, and I believe the execution will take place within the year."

STUDY IN CRIMINOLOGY.

(By George C. Dyer.)

They seem to have his bogus British aristocracy, "Lord" F. Seymour Barrington, in an exceedingly tight box, the only escape from which will be through a trap door by way of a rope, and if all be true that is charged against him—and the defect of those charges, perhaps, is that they do not tell half the tale—it is the plain duty of society to rid itself of this reckless beast of prey.

The case of this criminal will present many interesting phases to the alienist and student of criminology, for while it will not do to assume that such enemies of society are not responsible for their acts, it can scarcely be questioned that their disposition to crime is congenital and that they are so abnormal in some instances that they might also be considered insane. They are what Lombroso would describe as moral idiots. Their one great deficiency is a lack of the moral principle, and the vacuum thus left in their brains is filled with a great and all-inclusive selfishness, one of the manifestations of which is an inordinate vanity, or egomania. Does not this fit the description of Barrington?

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There is scarcely a doubt that this creature was born defective and abnormal. Since he has been connected with his English record it is seen that he has passed almost half of his entire life in prison. In every instance as soon as he was given his liberty, almost, he committed some crime. He could not be straight simply because he was born crooked. Here is his record, and there is scarcely a doubt that it is true: At the tender age of seven he branched out as an incendiary. When eleven years old he was convicted on a charge of embezzlement and given a five years' term in the reformatory; also the first thing he did when he got out was to commit burglary, for which he was given a ten years' term; it may be assumed that when next outside of prison walls he did not lose a moment's time, for before the expiration of that term he had committed another burglary and served a full decade therefor; then he turned confidence man, for in

the same year he was released (1891) he came to America, married a New York girl with money, squandered it, and deserted her; he then returned to America and committed bigamy by another marriage, and for the second time committed bigamy in St. Louis by marrying the Cochrane girl. He had been out of the workhouse barely three months and now has the crime of murder charged against him. This is his known record. There is more than a suspicion that the McCann murder is not the first murder he has committed, as he is sus-
360 pected of having murdered an army officer in England for whom he acted as valet, while nobody knows the number of people he has swindled through posing as a British army officer and aristocrat with vast expectations and glowing tales of castles in England, though doubtless a great many. At least there is no evidence that he ever worked except under the compulsion of the prison regime.

Incendiary, embezzler, burglar, bigamist, confidence man, swindler, liar, murderer, with more than twenty years spent in prison, although but 43 years' old. That is his known record. It cannot be the life of a man anywhere near sound and sane.

Barrington, outside of his crimes, according to the books, has all the symptoms of a congential moral degenerate. He is an outrageous liar. He is not credited in true lines in any respect, and he cannot be expected to speak the truth any more than he can act it. When caught in the most monstruos falsehoods he has exhibited no sense of shame or humiliation, because his inordinate vanity and self-esteem were protection against anything of that sort. He is cold-hearted and lacking in the finer attributes of the race. He has no sense of gratitude, his abnormal selfishness rather leading him to believe that whatever was done for him was only his due. He probably had a strong sexual impulse, and thus attracted women, but he had no capacity for love, as he in the most heartless manner deserted women who doubtless loved him.

The newspapers describe this criminal as shrewd and crafty. He is nothing of the kind. He is a fool, as are all men with the irresistible impulse to crime.

When he made up his mind to murder McCann he left a trail of circumstantial evidence ten miles long to the place where the murder was committed and ten miles back, as wide as a turnpike and much plainer. Dozens of people saw him going with McCann and returning without him, with blood all over his clothes and wearing his victim's hat. He did not have the brains to reason out the fact
361 that McCann's disappearance would cause an investigation that would result in disproving the blundering lies he told. He did not seem to perceive that the victim's disappearance in his company would naturally direct strong suspicion toward him because of his criminal record. He even sent lying messages and telephone messages, manufacturing evidence against himself in case of an investigation. He also permitted himself to be arrested with the dead man's jewelry on his person, and, like all other criminals, he lacked

the sense to close his mouth and keep it shut after he was accused of murder, but must needs tell a long string of lies, which were easily shown to be such and only tightened the net about him.

The truth is that such defectives as he are nature's mistakes, her falsehoods, if nature may be accused of such things. They therefore have no true sense of proportion. They lack harmony and coordination within themselves, and they therefore lack the power to devise deviltry that will defy detection. They are bunglers ever, because in crimes they always do something that is so out of proportion and harmony to the balance of the plan that it is easily detected. Lacking balance, their work refuses to balance. "Murder will out," they say, but do not tell you the reason. It is that fools commit it. Wise men could plot crimes that would defy all detection, but the fact that a man is wise and normal is the very reason he does not commit crimes. He has the moral sense that makes crime abhorent and he is too wise to enter into a conflict with a thing so much stronger than he—the law. It may be argued, then, that the mere fact that a man would commit a crime, or, at any rate, manifests a criminal tendency, is proof that he is a fool. Otherwise he would move in the course of least resistance and would not enter into such unequal conflicts.

One manifestation of criminal strabismus is seen in the failure to appreciate the moral enormity of crime in defectives.
362 When the crafty "Barrington" led the drunken McCann away out into the darkness and solitude to murder him, it did not appear to him as a horrible act, repugnant to every instinct of the normally constituted man. To bloodily murder his benefactor and rob the man who had befriended him in his distorted perspective probably did not appear as an act even of great importance. Other people might raise a row about it if they knew it, but, estimating them by his own great selfishness, he concluded they would forget all about it. He is accordingly a defective, a blunderer, and a fool, as is indicated by the ease with which his crimes have found him out. His extreme selfishness is one of the factors of his unbalance. He is guided by it solely, but it is so supreme in Barrington that, as it leads him to completely ignore his obligations to his fellow-man, often induces him to underestimate the dangers to that self from any given action.

And as to that other theory that is gathering force? The theory that McCann is not dead, a theory given some value by the falsehoods of various kinds the woman has told. A theory that a dead body was procured, and a conspiracy concocted to cheat some insurance company. If the theory is true, it still is proof of the contention that the natural criminal such as Barrington lacks the capacity to devise and execute a criminal act calculated to escape the law. If it was an insurance conspiracy, it was bungled, ill advised, and bound to fail. Only by failure can it save the man Barrington from the consequences of the greater crime of murder.

The papers speak of a manifestation of remorse on the part of the accused. To such creature remorse is impossible, although some of his acts have that appearance. It is said that at times since he has been in St. Louis he would often shed tears, but these should be taken for no manifestation of remorse. Of course they were largely crocodile tears and were partly shed to excite the sympathy of
363 them that beheld, but there was a degree of sincerity in them, too. At one place he wept, as he told the landlady, because he was a deeply wronged man, and aside from the effect on others, expected from such sloppy sentimentality, that was not doubt the real reason. He was feeling sorry for himself. His enormous egotism led him to take account only of the reprisals society had made on him for his crimes; his lack of moral principle and this same abnormal selfishness prevented him from taking any account whatever of the far more grievous injuries he had first inflicted on society. When the rope is around his neck, his lack of ability to weigh the various factors of right and wrong and his supreme selfishness will convince him beyond doubt that he died a martyr.

And who will say that Barrington is not an abused man, a victim of the ignorance of the race. Science has learned enough about physical disease to isolate the man with yellow fever or smallpox lest he do great injury to his fellows. The insane with homicidal mania are restrained for the same reason. Science has discovered that habitual criminality is a disease, but it has not devised a way to diagnose it with certainty in its early stages and before it has damaged society. It tells us that some men are born with hereditary defects and mind and mental abnormalities that impel them irresistibly to crime (and I believe that the criminologist would pronounce Barrington of this order), but science has not defined that fine line of demarcation between responsibility and irresponsibility in the acts of men, and until it does society may only decide crudely for itself and apply the prison cell and the gallows by way of protection.

Q. What do you find on page 148, Mr. Altheimer?

A. I find one article on the left-hand side of the page—a clipping from the St. Louis Chronicle of the 6 of July, 1903, and on the right-hand side of the page I find a clipping from the St.
364 Louis Star July 6, 1903.

Mr. GROVER. Insert all on the page.

(This offer is in words and figures as follows:)

BARRINGTON READS BIBLE CONTINUOUSLY IN HIS CELL.

Submits meekly to rough jail fare, but can not sleep at night for visions of McCann, his murdered victim.

Nearly 1,000 persons applied at the county jail in Clayton Sunday for admission to see "Lord" Barrington. Men, women, and children, possessed of morbid curiosity to see the Englishman and alleged murderer of James P. McCann, went in crowds to the jail from [illegible] till night. All were denied admission.

Barrington spends most of his time reading from a well-worn Bible, which he perused so assiduously when he made his bridal trip with Miss Wilhelmina Grace Cochrane six months ago. He remains in his cell in preference to affiliating with other prisoners in the cage. Barrington evidently feels himself better than they and has but little to say to them. In consequence of his exclusiveness he has incurred the hatred of the other inmates, who ridicule him on the slightest provocation.

Prosecuting Attorney Johnston now permits him to see the daily papers and he is much gratified over this privilege, but evinces chagrin that interest in his case is on the wane. He seems to think it a slight that the press is not devoting more space to the murder.

Barrington receives but little mail, outside of letters and circulars from detective agencies, pressing him to put his case in their hands, with the promise of placing the guilt of the McCann tragedy upon someone else. So far, Barrington has paid no attention to these communications.

Sheriff Hencken stated to the Chronicle Monday that Barrington was gradually weakening again, and he believed that it would be but a question of a few more days when he would make a full con-
365 fession. He manifests unusual meekness, if not penitence. He has lost most of his braggadocio and humbly submits to the inconveniences of cell life, with its accompanying fare of bread, beans, and bologna.

The "lord" rests poorly of nights. His slumber is intermittent. He starts from his cot with cries of terror. When asked if bad dreams were the cause Barrington replied in the negative, saying the warm weather was responsible for his restlessness. Fellow-prisoners, however, are firm in the belief that Barrington sees visions of his murdered victim, and that McCann is haunting him every night.

BARRINGTON WANTS PREACHER.

Said that no services were held in the jail—McCann's slayer keeps up a religious front.

"Lord" Frederick Seymour-Barrington was greatly depressed Sunday because there were no religious services in the Clayton jail.

He commented upon this fact. He thought that some minister of the gospel ought to have visited the jail for the benefit of the prisoners.

The celebrated prisoner, who is accused of murdering James P. McCann, pretends to be of a deeply religious nature.

It is said that he can repeat verbatim chapters of the Bible.

After Barrington's release from the workhouse he was seen frequently at Salvation Army meetings. He took, apparently, much interest in the meetings, and it was reported that he intended joining the army.

He frequently left the saloon, where he was displaying himself to the curious public, long enough to attend the Salvation Army meetings of the street.

Mrs. George Frederick Neville Barton, believed to be the deserted wife of Barrington, says that he always pretended to be of a
366 deeply religious nature. His feigning of religion often brought him sympathy.

His recent wife, Wilhelmina Grace Cochrane, said that he spent much of his time in prayer during their week of wedded bliss.

Now that he is in jail accused of murder, Barrington keeps his religious front.

Visiting the prisoner in jail has been practically discontinued since The Star pointed out to Sheriff Hencken the opportunities offered for escape. The sheriff permits only those who have business with Barrington to see him, and he is taking all necessary precautions to prevent his bird from getting away.

Barrington frets when he reads the newspapers. He read and reread every line printed about him in Sunday papers, and declared that he had been given the worst of it.

He went through his trunk Sunday and obtained a change of linen. He is very careful of his toilet, even in jail. As he has nothing to do, it is not hard for him to keep up his neat appearance.

Attorney Beno Altheimer, Barrington's counsel, visited the scene of the murder Sunday to gather evidence. He claims to have ascertained facts which will be of material assistance to his side of the case.

The preliminary trial of the case will be held Wednesday.

Q. Mr. Altheimer, while you were connected as attorney in this case I will ask you if you heard many expressions of opinion of people out here in St. Louis County regarding this case and the defendant's guilt or innocence?

A. Yes; I did.

Q. What were those statements?

A. Out at Bonfils, near the scene of the crime, in this county, statements were made that they ought to hang the defendant. No later than two or three days before I resigned from this case I was at the corner real estate concern—Mr. Baldwin's real estate office in Clayton—and there was an elderly gentleman in there and
367 we were talking, and there was another party in the office, and the gentleman in the conversation says: "Well, he ought to be hung; that is all there is to it;" and I tried to argue with him and show him why the man was innocent, and he says: "Well, he ought to be hung anyway."

Q. How many times did you hear statements similar to that in this county?

A. Many times. It seemed to be a very common everyday remark.

Cross-examination by Mr. JOHNSTON:

Q. Mr. Altheimer, out there at Bonfils, who was the person from whom you heard expressions out there?

A. Well, I heard possibly, as best I remember, everybody I remember that I spoke to.

Q. Were any of those you talked to members of the coroner's jury?

A. Some of them I talked to were and some of them were not.

Q. Who was it that was not?

A. Well, I don't think the Krueger boys were.

Q. Those were witnesses in the case, were they not?

A. Yes, they were; and I spoke to a grocery man across the way from the Wabash tracks who wasn't a witness, who seemed to believe in the defendant's guilt.

Q. What was his name?

A. That I don't remember, sir.

Q. What did he say?

A. The best I can remember he believed him guilty.

Q. How long ago was that?

A. That was about four months ago.

Q. You were attorney in the case at that time?

A. I was, sir.

Q. And were the chief counsel up to a few days ago?

A. Yes, sir.

Q. At the time were you then looking up testimony in support of your application for change of venue?

A. I wasn't. But I was at the point where it might be
368 necessary. I could see it then from the methods used in the different preliminary hearings.

Q. Didn't you say only a few days ago that you would like to keep in this county?

A. I might have suggested that if we could secure a fair trial we were desirous of keeping it here, but since the theatrical production it was impossible.

Q. Didn't you say since the theatrical production that if you had your way you would try it in this county?

A. Most assuredly I did not.

Q. Are you sure you did not?

A. I am, sir.

Q. Didn't you make this statement, that they were trying to butt you out of the case, but if you had your way you wanted to try it here?

A. No, sir; I denounce that. The best of relations exist between the present counsel and myself and the prisoner at the bar.

Q. You say that this play which you attended, the actor who took defendant's part, or who represented the defendant in this case, was hissed at all times?

A. No, sir.

Q. Isn't it a fact that the whole play was hissed as a rank farce?

A. No, sir. Taken as a whole it was ludicrous, yet the people who frequent Havlin's demand such a production.

Q. You think this kind of play appeals to them?

A. Yes, sir. There are different people in the world.

Q. Didn't the heroine forget where to faint on the board twice?

A. She seemed to be the caliber of woman who selected a place to faint so as to protect her dress.

Q. Didn't the whole press of St. Louis say it wasn't sincere?

A. No, sir. If you take one or two editions they may show it up in that light, not all the St. Louis press.

Q. Did you hear anyone since the play say they were prejudiced on account of the play?

A. I was at Havlin's theater Sunday afternoon. I was sitting where I could observe the stage and the audience. Near me sat a young gentleman, whose name I can't recollect—David somebody. He was seated next to me, and in the course of a conversation I told him what I was there for, and we walked outside and had a smoke together, and he said if anybody would ever see this play they would be certainly not fit to sit on the jury.

Q. Do you know whether that was from a standpoint of the state of the defense?

A. I inferred from his conversation it was as against the defendant.

Q. That is what you judged?

A. Yes, sir.

Q. When did you first hear this play was being written?

A. This play was being written—oh, it has been sometime.

Q. Who first spoke to you about it?

A. I believe I noticed something of it in the St. Louis Post-Dispatch, or it was called to my attention by some of my gentleman friends down there.

Q. Do you know Mr. Messing?

A. Yes, sir.

Q. You came out to jail with him?

A. Yes, sir.

Q. You and he had a consultation with the defendant?

A. Yes, sir.

Q. What connection did Mr. Messing have with the play?

A. He was the actor who took the part of Leymour, "The Desperate Lord Barrington," on the 27th of December, 1903.

Q. His name is Oscar Dane?

A. His stage name; yes, sir.

Q. In that conversation was anything said about this play?

A. Yes, sir. Mr. Messing and myself are friends. That is, we have been friends and are friends. I have known his family some time; called at his home; enjoyed their hospitality. One day in my office I received a letter from Mr. Messing, or a note from him, saying that he desired to see me. I sat down and wrote him a message

in answer to this, that the pleasure would as agreeable to me as to him to meet him. I thought the most convenient place to meet him would be at my office and I sent the note over by a messenger,
370 and he sent back word that he would meet me at my office, so he came over and we had a conversation. He spoke to me relative to the Barrington case, and at the outset he spoke to me as being desirous of putting on a Barrington play.

Q. About how long ago was that?

A. That was possibly a month before the production of the play, I should judge. Now, Mr. Messing—in the course of the conversation I said to Mr. Messing: "You know that I am the attorney for this action and that I am in an unfortunate position. I owe a duty to this man and to my profession and to the public, and stand responsible for the proper handling of this case, and I want to tell you now and warn you that I will consider nothing in this play that will be detrimental to this man; that I wouldn't consent to the production of this play unless it would pass the censorship of his attorneys; that there would be nothing detrimental to him." He assured me of that fact. A few days later he stated that he would like to have an interview with Mr. Barrington, saying he would like to hold him up in a light that would not be injurious to him, and requested me to bring him out to the jail, which I gladly consented to do.

Q. (Mr. Grover.) He had agreed to submit to the censorship of the defendant's attorneys before this time?

A. Yes, sir.

Q. Then, if he would propose to show him up favorably you had no objection?

A. Certainly not.

Q. Wasn't it Mr. Grover that protested against the production of this play, and you acquiesced in it?

A. I don't know whether it was Mr. Grover that protested and I acquiesced or not. The final result is often arrived at from many sources. He would suggest and I would acquiesce or I would suggest and he would acquiesce.

Q. In your conversation with Mr. Messing was anything said about any revenue raised for the defense of this case?

A. In answer to your question I would gladly answer to
371 this effect: When Mr. Messing broached the subject to me I said to him—"Mr. Messing, the attorneys for Barrington will permit nothing in that play that will be detrimental to the defendant. If you desire us to censor this, we certainly are not going to work for you or your theatre for nothing. I desire to say to you that we do not stand responsible to condone any criminal offense. We don't stand responsible for the court or for the prosecuting attorney. However, after a censorship, if there is nothing detrimental to us, of course our reasons for objection would be naught. Outside of that there is nothing.

Q. Did you then intimate that you were to receive something for doing this?

A. Not at all. I expected to be paid for our work. You know lawyers don't get their license for working free of charge.

Q. Did you have anything to do with the preparation of the play?

A. Nothing in the world, in any manner, shape or form, nor would any other reputable lawyer.

Q. You said that down at Judge Campbell's court, at the first sitting of the preliminary, that when a point was ruled against the defendant that it met with applause and clapping of hands.

Mr. GROVER. He said here.

Q. I believe you said also that that took place in Judge Campbell's court?

A. Yes, sir.

Q. Do you remember any particular occasion when that took place?

A. To answer the question definitely like that would be like trying to count to you how many drops of water in a rain barrel.

Q. Wasn't that clapping of hands the result of some procedure there and not in relation to the defendant at all?

A. No, sir; it was not. I don't think it is the common trend of humanity to give vent to morose comedy at all.

Q. You spoke of the same in the preliminary in the county court room. Do you know there was one man and he from the city of St. Louis, clapped his hands, and the one standing next to him told him he was a fool for doing it and ought to be thrashed

372 for it?

A. No, sir. It was that same occasion when the attorney went out in the crowd during recess I felt uneasy.

Q. What occasioned you to feel uneasy?

A. Being from Arkansas there would be some great stress required to cause me to feel uneasy. I don't know if you have ever been in a crowd or mob moved by antagonistic feelings.

Q. What were these antagonistic feelings?

A. They were against my crowd and myself.

Q. Can we know something about them?

A. For instance: "Why in the devil don't they go on and not delay matters. He ought to be hung long ago."

Q. Wasn't that a little friendly advice? You didn't take that as a threatening demonstration?

A. If swords are shields then I have a misinterpretation of the English language.

Q. Might not this demonstration have been against you and not your client?

A. I think in a case of this kind there is such comingling of client and attorney that demonstration against one would be against the other.

Q. That is all, Mr. Altheimer.

Miss WILHELMINA GRACE COCHRANE, being duly sworn as a witness on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. Miss Cochrane, state your name in full.
A. Miss Cochrane.
Q. What is your first name?
A. Wilhelmina.
Q. Wilhelmina Grace Cochrane?
A. Yes, sir.

Mr. JOHNSTON. I would like to know what the character of testimony is which you would like to show by this witness.

Mr. GROVER. You will find it out when we offer it.

Q. Miss Cochrane, I hand you a copy of the St. Louis Post-Dispatch (will you take it please) of July 12, 1903. That has been offered in evidence here before, and I will ask you if you ever
373 saw that article in that page before. It appears on page 2 of the magazine section of the Post-Dispatch of July 12, 1903?
A. I don't know whether I have or not.
Q. You don't know whether you ever saw that article or not?
A. No, sir.
Q. I will ask you if you wrote any part of that article?
A. Not to my knowledge.
Q. I will ask you if you gave to the Post-Dispatch of St. Louis, Missuori, the substance of this article, and I wish you would read it over so as to be sure whether or not you did?

Mr. JOHNSTON. We object. Miss Cochrane can claim her privilege during the time she was married to defendant in this case.

Mr. GROVER. This is not a privileged communication between husband and wife when spread broadcast by the wife. In the next case where there is an objection to the production of a witness against a man charged with crime because of the witness being his wife, that is a personal privilege and not a privilege of the State.

COURT. What difference does it make whether she wrote it or not?

Mr. GROVER. First, if she did not inspire this article that has gone broadcast throughout this community and created prejudice against this man, then the newspaper has created prejudice in this community unjustly and wrongfully, and that is certainly material to this case. If she did inspire it, it is simply a matter that goes to show the intensity of prejudice in this case.

Q. You reside in the city of St. Louis, do you not?
A. I am visiting here.

Mr. GROVER. I wish to show that a false report sent around which created prejudice in a community is worse than truth and fact, and gives a more substantial reason why a change of venue should be granted.

374 Mr. JOHNSTON. We object to it as irrelevant to the matter at issue.

COURT. I think it is irrelevant. I will sustain the objection.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Now, Miss Cochrane, I wish to ask you further about some facts that have appeared in the press. I will ask you whether or not the defendant in this case, Frederick Seymour Barrington, himself, and by himself, ever unequivocally represented to you that he was Lord Barrington?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. I will ask you, Miss Cochrane, if you are acquainted with any of the people of this county?

A. Not that I know of.

Q. Are you acquainted with any that come from the county in the city of St. Louis, either to work or otherwise?

A. Not that I know of.

Q. Where do you reside?

A. I am visiting at 4368 West Belle place.

Q. You were at one time the wife of the defendant in this case, were you not?

A. I was supposed to be. I would like to make this statement——

Mr. GROVER. We object.

The COURT. Objection sustained.

Mr. JOHNSTON. I am very sorry. I would like to have you make it, but it isn't relevant in this case.

Q. That will do, Miss Cochrane.

375 Mr. JAMES BARNES, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

State your full name?

A. James Barnes.

Q. Mr. Barnes, are you connected with the Watchman?

A. Yes, sir.

Q. You reside in Clayton, St. Louis County, Missouri, don't you?

A. Yes, sir.

Q. Will you state to the court what papers circulate in this county—what daily papers?

A. There is no county daily paper. The city papers circulate here.

Q. The St. Louis Post-Dispatch, Star Sayings, Chronicle, World, and Globe Democrat and Republic circulate here?

A. Yes, sir.

Q. They are the only dailies circulate in the county, of any consequence?

A. Those are all that I know of. Of course some of the German papers circulate here.

Q. Does the St. Louis World have much circulation here?

A. No, sir. I don't see a World only once in a great while.

Q. Those other papers have a broad circulation outside of the World?

A. Yes, sir. The Globe and Republic are widely read, especially in the suburban towns.

Q. And the Post-Dispatch?

Yes, sir.

Q. And as a matter of fact you really don't know how much the World is read?

A. Oh, no. As far as Clayton is concerned I have not seen a half dozen copies here.

Q. You don't know how many copies go out to the Democrats of the county, do you, through the mail?

A. No, sir. The only place I saw it was over at the Argus office.

Q. This is a copy of the paper you are connected with?

A. Yes, sir; as editor.

376 Here is an article, January 1st, 1904, entitled: "County officials occupied a box. They see 'The Desperate Lord Barrington' produced at Havlin's Theatre?"

A. Yes, sir.

Q. That appeared in your paper?

A. Yes, sir.

Q. And your paper has quite a circulation throughout the county?

A. Yes, sir.

Mr. GROVER. We offer that article in evidence.

Mr. JOHNSTON. Wait a minute. I want to ask a few questions.

Q. Have you heard the case of the State of Missouri against Frederick Seymour Barrington discussed by any persons since the 28th of June?

A. Yes, sir; a general discussion among the people here.

Q. What, if anything, have any of those whom you have heard discuss the case said as to their believing in the guilt or innocence of the defendant?

A. When the case first came up—when it first had such notoriety through the newspapers—the opinion was pretty evenly divided. A great many of them expressed the opinion that possibly there might be a scheme between Barrington and McCann and McCann's wife and there were all kinds of theories advanced, of course, but the general opinion, as far as I could see, was against Barrington, according to evidence that had been produced.

Q. Was that opinion based upon facts or upon newspaper reports?

A. Well, up to the time of the coroner's inquest, when it was held here at Clayton, they based their opinions generally on newspaper reports. There were no facts produced until Dr. Koch held the inquest here, as I remember it.

Q. Has there been any change in that opinion since?

A. The only change I see is lack of interest in it. There is not near as much interest taken in the case around in the county here as far as I have seen. I think they are kind of tired of it.

Q. How long has it been since you have heard it discussed?

A. Nearly every stranger comes in here will ask somebody
377 about Barrington, and I have often heard the county people talking to strangers about Barrington. It is hardly ever discussed among the people here, as far as I know, any more.

Q. You have heard people from the outside, in the county, discuss it among themselves?

A. When I was outside of the county I have.

Q. I mean people away from Clayton?

A. No, sir. I am hardly ever away from Clayton except to go into St. Louis.

Mr. GROVER. Now, we offer the Watchman-Advocate in evidence. It is marked "Exhibit One."

(This article is in words and figures as follows:)

COUNTY OFFICIALS OCCUPIED A BOX.—THEY SEE "THE DESPERATE LORD BARRINGTON" PRODUCED AT HAVLIN'S THEATRE.

A number of the county officials and their friends, including Deputy Sheriffs J. W. Bellairs, Robert Schnecke, and John Ossenfort, Assessor Otto Preiss, and County Judge Fred L. Kerth, former Recorder Frederick Essen, former Prosecuting Attorney F. A. Heidorn, Alex Kessler, Joseph McAtee, Judge I. W. Campbell, X. Weidner, and John Wilson were the guests of the management of the company producing "The Desperate Lord Barrington" at Havlin's Theatre in St. Louis Monday night. They were given a post of honor in one of the boxes and received the most considerate attention at the hands of their hosts.

The occasion of the "box party" was the attempt made by Barrington's lawyers, Beno Altheimer and Shelley Grover, to have the participants in the production cited for contempt by Judge McElhinney on the grounds that it created a prejudice in the minds of the public against their client. The order was refused and the attorney representing that company invited the officials and a number of their friends to pass judgment on the performance.

378 Oscar Messing, author of the play, has drawn on his imagination to a fearful extent, and the patience of a suffering public to a still greater degree. Judging from reports, the play is written for the sole purpose of giving every person in the caste an opportunity to choke the desperate "lord."

The plot is original, if the following dramatic critic contained in Monday's Republic is to be credited. It attempts to clear the early history of Lord Barrington and also furnishes the reason for his alleged visit to Bonfils last September.

The synopsis of the scenes refers to the Bonfils tragedy, as follows:

Scene 3—Bonfils, near St. Louis, Mo. Time, September, 1903. Solving the great McCann mystery.

Before the quarter pole is reached Frederick Seymour (later the bogus "lord') learns various secrets regarding the wife of his em-

ployer, Lord Barrington, an elderly English nobleman, and attempts to gain her love by force.

Not succeeding, he vows vengeance, and, accidentally learning that Barrington's nephew, Jack Barrington, is the object of Lady Barrington's affection, plots to ruin him.

Lord Barrington becomes intimately acquainted with the business end of an electrical machine through the machinations of Leymour, but the latter places the blame upon Lord Barrington's nephew, and the latter is sentenced to jail for fifteen years.

The second act finds Jack Barrington and Seymour in prison (the reason not explained). The latter comes out in time to get thoroughly choked by Jack Barrington, who shows a desire to retaliate because he was barred from the general assault of the preceding scene.

Leymour calls for help, and as the wardens rush to his assistance, he skips upstairs and presumably gains his freedom, and his next appearance is in America as Lord Barrington.

379 The third act transfers the whole bunch to America. (Another unexplained mystery.)

During the progress of this act the bogus Lord Barrington attempts to marry the daughter of a wealthy mill owner, but, unfortunately, can not resist shooting electricity into persons, and, with the aid of a little gun cotton, he blows up the mill owner. The climax is another choking scene, perhaps even better than any of the preceding ones.

The fourth act is laid in the vicinity of St. Louis. The first scene shows the interior of a lowly cottage, through the windows of which can be seen a valley surrounded by mountains. The second scene is on Broadway, and the third is a weird mountain gorge called "Bonfils."

McCann is introduced in this scene. Barrington and McCann go there to meet a woman, one of Barrington's many wives, who has promised to pay him a large sum of money for a compromising letter.

Barrington, as usual, succeeds in getting thoroughly choked, but McCann rushes to his rescue and shoots wildly into the air. Several persons fall to the ground, and McCann, with a muttered "I've tickets for South America; I must e'en flee from this accursed spot," rushes hurriedly into the wings.

A quick curtain prevents the audience from seeing how devastating McCann's artillery practice has been, but the final scene shows the Clayton jail, and through a conveniently transparent brick wall Barrington can be seen writing the history of his life, which he gives to one of the women he has wronged and thereby brings joy and happiness to others.

The final curtain falls as Barrington smokes a fat cigar, evidently fortifying himself for the choking to be administered by the two neglected members of the cast, who are waiting for him at the foot of the stairs, justly indignant at the oversight of the man who built the play.

380 Mr. BENO ALTHEIMER, being recalled for further examination, testified as follows:

Direct examination by Mr. GROVER:

Q. I show you a newspaper clipping here on the right-hand side; do you know what that article is—where it came from?

A. The article on the right-hand side of this page is a clipping from the St. Louis Globe-Democrat, a daily newspaper published in the city of St. Louis, from date of—you can't see the date.

Q. Well, since this case was pending?

A. Yes, sir. It is in reference to this case. You can't see the date.

Q. (COURT). About when was it?

A. It was about in August.

Q. The St. Louis Globe-Democrat?

A. Yes, sir.

Mr. GROVER. Now, this is Exhibit 2.

Q. Now, I call your attention to Exhibit 3 on the left-hand side of the same page there—that newspaper clipping—what is that?

A. That is marked "Exhibit 3," and is a clipping from the St. Louis Republic, a daily newspaper published in the city of St. Louis.

Q. When was that clipping, about?

A. Near about the same time as the other.

Mr. GROVER. Now, I will read the headlines. The first one is: "Think Barrington is Jack-the-Ripper. Mrs. McCann and her attorney have new theory regarding prisoner. Want him closely watched. Suspicious of woman who asked to sleep at jail. Say she might have been bogus lord's friend, carrying him poison with which to end his life. Trip to Eads bridge."

The other article is: "Thinks Barrington is eating soap. Doctor William Smith advises officials to watch McCann's alleged slayer. May be cause of illness. Doctor Conan Doyle's schoolmate says symptoms are like those noted among prisoners playing for sympathy."

Mr. GROVER. Now, I offer these Exhibits 2 and 3 in evi-

381 dence.

(They are in words and figures as follows:)

(EXHIBIT 2.)

THINK BARRINGTON IS JACK-THE-RIPPER.

Mrs. McCann and her attorney have new theory regarding prisoner.—Want him closely watched.—Suspicions of woman who asked to sleep at jail.—Say she might have been bogus lord's friend, carrying him poison with which to end his life.—Trip to Eads bridge.

Tuesday afternoon a well-dressed, middle-aged woman appeared at Clayton, told the county officials there that she was without money, and asked the sheriff's permission to spend the night in the county jail. Her request was not granted.

The appearance of the woman indicated that she had no business in the jail. Money was offered to her to buy lodging and a meal and she indignantly refused it. She declined to give her name or her place of residence and was looked upon as a mystery.

It is now believed that the mysterious woman was a friend of bogus "Lord" F. Seymour Barrington and that her object was to secure entrance to the jail for the purpose of helping him in some manner.

Mrs. McCann, wife of the man whom Barrington is accused of having murdered, is confidant the woman was there to assist Barrington. She stated her suspicions to her attorney, A. C. Davis, yesterday, and the latter was disposed to treat her theory as a very plausible one.

THREATENED TO END LIFE.

It is alleged that Barrington has threatened to commit suicide. As he is now guarded in the Clayton jail, the only way he could accomplish his own end would be through assistance from the outside. Mrs. McCann believes that Barrington has friends in St. Louis—women friends whom he could induce to hand him the stuff that would enable him to kill himself if he decided that was the best thing to do.

382 She doubts, however, whether he would have the nerve to use poson upon himself if it were furnished him. Nevertheless, Mrs. McCann is of the opinion that the sheriff should keep a close watch over her husband's accused slayer, and not permit strangers any privileges about the jail.

It is presumed that Barrington will be tried in September. When the date is finally fixed a Scotland Yard detective will be here to identify him, if possible, as a professional crook, with sixteen years of penal servitude to his credit in English prisons. Mrs. McCann and her friends will pay the expense of bringing the detective to this country.

Attorney Davis declared yesterday that it would not surprise him if it was finally revealed that Barrington was the notorious "Jack the Ripper" of the Whitechapel district, London.

Barrington, it is alleged by those who know him best, is a moral pervert. The character of the crimes perpetrated by "Jack the Ripper" was evidence that that criminal was morally perverted. Here the comparison between the two is ended. The manner in which McCann's life was taken was very different from that in which the Whitechapel victims met their deaths.

ADMITTED ASSUMED NAME.

Barrington, while living at the McCann household, is alleged to have admitted to Mrs. McCann that he was going under an assumed name. He practically admitted that he had been in trouble and that he had assumed the name of Barrington to keep the facts away from his mother, whom he did not want to disgrace.

It is now claimed that between the time that McCann disappeared and the finding of his body in the quarry at Bonfils Barrington seriously considered committing suicide.

Attorney Davis is in possession of information that the bogus English lord went to the Eads bridge with the evident intention of throwing himself into the river. His nerve failed him, how-
383 ever, it is said. If this information is reliable, then it is probable that the fellow still harbors notions of suicide, and the belief expressed that the mysterious woman at the Clayton courthouse might have been there to assist him may be well based.

Immediately after his arrest and the positive identification of McCann's body Barrington was very despondent. During this despondency he remarked to an official that the evidence against him was such that the officials might hang him without delay. He admitted nothing more, and efforts to secure a confession then were futile.

(EXHIBIT 3.)

THINKS BARRINGTON IS EATING SOAP.

Doctor William Smith advises officials to watch McCann's alleged slayer.—May be cause of illness.—Doctor Conan Doyle's schoolmates says symptoms are like those noted among prisoners playing for sympathy.

That F. Seymour Barrington, accused of murdering James P. McCann, has made and kept himself sick by eating soap is the belief of Doctor William Smith, of No. 3949 Washington Boulevard.

Doctor Smith has advised Assistant Chief of Police Gillaspy to suggest to the authorities at Clayton that Barrington be watched, and soap be kept away from him except when turnkeys are present at his baths.

"While it would require a long time for soap to kill a man," said Doctor Smith, "He may remain actually ill almost indefinitely from a practice which is common among prisoners, especially in England, where Barrington comes from. This ruse is often practiced, either to get out of performing any labor, and at the same time receive better food and treatment, or to arouse the sympathy of the public."

Doctor Smith, though he has not visited Barrington at Clayton, has kept posted on the case, in which he takes a great interest because of his fondness for the science of criminology.

384 As stated in the Republic soon after McCann was murdered, Doctor Smith made a study of the crime for the same reason that led Doctor Conan Doyle, who was his schoolmate at the University of Edinburgh, Scotland, to write the "Sherlock Holmes" stories.

They were both pupils under a professor who made a hobby of both crimes and criminals, and whose deductions formed the basis upon which Doctor Doyle created "Sherlock Holmes."

"If Barrington is Barton," said Doctor Smith, "he is familiar

with the ways of British convicts, and, at all events, he is apt to have known before his present trouble that he could bring on an illness of an appealing kind by eating ordinary soap. If he planned to arouse public sympathy would not this be a good scheme?"

SYMPTOMS ARE SOAPLIKE.

Doctor Smith stated that he had studied the symptoms of Barrington's illness, as they have been described in the newspapers, and they agree perfectly with those which would be produced by taking soap internally.

"The effect in brief is this," said Doctor Smith: "Complete depression, inability to take food, elevation of temperature, bowel trouble and nausea, and a gradual wasting away. It has been said that Barrington had typhoid fever. I may only say that if after three weeks of typhoid fever he was able to go to court he had the most remarkable case of typhoid I have ever heard of in twenty years' practice as a physician."

Clayton jail authorities yesterday were inclined to scout the idea that soap is the cause of Barrington's physical troubles. They say that the consumption of soap has not increased perceptibly since the alleged slayer of McCann has been there, though he bathes many times oftener than the average prisoner.

Barrington, it was admitted, has access to the soap used
385 by about ten other prisoners, and therefore the amount of soap used individually could not be exactly ascertained.

It often happens that one set of prisoners use more soap than another set of the same number, and therefore the supply varies.

Mr. GROVER. If your honor please, in the St. Louis Post Dispatch of Monday, June 29, on the inside, which I didn't note the other day, is a picture that I didn't offer then, and I offer it now. That is in the instrument already in—a hat, a watch, diamond stud, and a cane, which they say is McCann's. I offer that picture in evidence. It appears there that that is offered with the other paper.

(Here insert picture from page 2 of the Post Dispatch of Monday, June 29th, 1903.)

"The picture here called for has not been furnished by counsel, and hence can not be inserted herein—(Note by clerk.)"

Q. Mr. Altheimer, I hand you a newspaper clipping, these first two, and part of the third column; what are they from?

A. They are from clippings from the St. Louis Republic, a daily newspaper published in the city of St. Louis of date on or about——

Q. While the grand jury were in session considering this case?

A. Yes, sir.

Mr. GROVER. I offer that in evidence, "Clothing found beneath trestle may be McCann's. Coat, shirt, undergarments, and engraved collar button discovered by track laborers." Here is a picture of the clothes and the buttons. I offer them in evidence with the article.

(This exhibit is marked "Ex. 4," and is in words and figures as follows:)

CLOTHING FOUND BENEATH TRESTLE MAY BE M'CANN'S.

Coat, shirt, undergarment, and engraved collar button discovered by track laborers.—Sample of cloth the same.—Police believe articles are dead man's wearing apparel which were secreted in creek.—
386 Wife may identify them.—Finder and patrolman who worked on case will testify in Barrington case before St. Louis County grand jury.

PROPERTY FOUND UNDER TRESTLE NEAR BONFILS.

Two gold collar buttons, one of which bears the initials "McC."—A four-buttoned sack coat, the material of which corresponds with a sample held by McCann's tailors.—A shirt, the pattern of which corresponds with the cuff found some time ago near the quarry where the body was discovered.—An undershirt, badly decomposed, but upon which blood stains can be distinguished.

A coat, shirt, undershirt, and gold buttons, supposed to have been worn by James P. McCann on the night of his disappearance, were found by track laborers at 4 o'clock yesterday beneath a trestle on the St. Louis and St. Charles Railway a mile and a half from where the body was discovered.

The gold buttons were found on the shirt, one of which bears the initials "McC." The cloth of the coat corresponds with a sample of goods held by McCann's tailors, from which they say the coat was made.

The shirt is of the same pattern of goods as the cuff which was discovered in a near-by field a few days after the finding of the dead man's body. Stains of blood can be seen on some of the clothing.

The St. Louis County grand jury, which was investigating the case against F. Seymour Barrington, who is charged with the murder of McCann, adjourned yesterday without finding an indictment. The finder of the clothing and the detectives who have been working on the case will appear in Clayton to-day as witnesses.

387 With the find of yesterday, all the clothing, with the exception of the trousers and undergarments, are accounted for. The cuffs, shoes, and other articles found some time ago, were between the quarry and the bridge, where the coat and shirts were secreted, and it is the opinion of the officers that Barrington unknowingly dropped them as he walked from the quarry.

LABORER REPORTS FIND.

Yesterday afternoon Patrolman Patrick Early, of the mounted district, who rides on Easton avenue and around Wellston, was approached by a track laborer, who, in great excitement, told him of a fellow laborer finding some clothing under a trestle of the railway.

Early rode to the bridge and there found that the articles mentioned had been discovered under the bridge by Henry Mosely, of Bridgeton. Mosely refused to tell where the clothing was, saying he wished to claim a reward for finding it.

Patrolman Early called up the mounted police station, and Captain McNamee, Special Officer Gratiot Cabanne, and Sergeant Patrick Kirk went to the place.

In the power house Captain McNamee found the clothing. Louis Hesserich, foreman of the track gang, had the two gold buttons which were taken from the shirt.

The police did not make a critical examination of the clothing until they reached the police station. Then the opinion was advanced that the clothing belonged to McCann.

Kirk and Cabanne, who have been working on the case at intervals since the body was found in the Bonfils quarry, had secured from Mills & Averill, McCann's tailors, a sample of the goods from which his coat was made. Mrs. McCann sometime ago assured the police that the sample corresponded with the cloth of the coat her husband wore on the night he left home.

IDENTIFIED THE CLOTH.

The coat found yesterday is of a peculiar pattern, known as "salt and pepper," and bears a slight check. It matches the
388 sample held by Kirk and Cabanne. The trousers of the suit are now at the home of Mrs. McCann. McCann wore light trousers on the night the murder is alleged to have been committed.

The back of the coat collar, where the tailor usually places the name of the owner of the suit, is torn from the coat found yesterday. This is also the case with the inside breast pocket, which sometimes bears identification marks. No articles were found in the coat's pockets.

Kirk, Cabanne, and Capt. McNamee say the shirt pattern corresponds with the cuff found. The collar button worn at the back of the neck is the one which bears the initials "McC." It is of gold and the lettering is on the flat side.

All the clothing appeared as if it had been made into a bundle. Places where the shirt is torn can be distinguished, and Capt. McNamee thinks this indicates a struggle.

The buttons of the coat are missing, and the evenness of the threads which once held them leads to the belief that they were cut off. The police believe the buttons, with the contents of the pockets, were dropped into the stream beneath the trestle. A search of the creek bed will be made this morning.

At the time of McCann's disappearance the water in the creek was almost even with the top of the trestle. It is believed the clothing was thrown in the water, thinking it would be carried away and that the eddies of he creek lodged it under the bridge.

It was a mile further east that Barrington was first seen on the morning after the murder.

A description of the clothing was furnished Mrs. McCann last night, but as she had not seen it she was unable to say positively that it belonged to her husband.

"I have been notified by the police that clothing was found," Mrs. McCann said, "and will see it in the morning. If the coat is preserved, I can easily tell whether it is the one worn by my husband."

389 She did not know whether her husband, at the time of his disappearance had a collar button marked "McC."

(Here insert picture of coat and buttons, in connection with Exhibit 4.)

"The picture herein called for has not been furnished by counsel, and hence can not be inserted here.—(Note by clerk.)"

Q. Mr. Altheimer, I hand you another newspaper clipping. On the right-hand side as you look at it there, what is that from—Exhibit 5?

A. It looks like a clipping from the Post-Dispatch. It is a clipping from the St. Louis Post-Dispatch when the grand jury were in session considering this particular case.

Mr. GROVER. I offer the map with this article. I offer the whole article, entitled: "Missing link in Barrington case."

(This offer is marked "Exhibit 5" and is in words and figures as follows:)

MISSING LINK IN BARRINGTON CASE.

Bundle of clothing declared to have been McCann's shown to grand jury.—Widow identifies garments.—Movements of murderer on night of killing are now definitely shown.

Mrs. James P. McCann called at the mounted district police station Wednesday morning, and, weeping bitterly, identified the clothing found by Henry Mosely on the St. Charles electric road late Tuesday, as part of that worn by her husband on the night of *her* disappearance.

The police also found the trousers *found* by the missing man on the night that he went toward Bonfils station in company with "Lord" Barrington, who is held at Clayton on the charge of having murdered him.

The trousers were found near where the bundle containing the coat, shirts, and buttons were found by Mosely.

Mrs. McCann was positive in her identification of the garments. She will go to Clayton, where she will appear before

390 the grand jury.

The discovery of the trousers Wednesday morning ends the search for the garments of the missing man.

The clothing was found by Mosley under a trestle of the St. Louis, St. Charles and Western electric road about a mile and a half from the quarry in which the body supposed to be that of McCann was found.

It consisted of two gold collar buttons—one bearing the initials "McC."—a four-button sack coat, pepper and salt pattern, which the police say is of the same goods as a sample furnished by McCann's tailors; a shirt of similar pattern, with the cuff found near the quarry; an undershirt, bloodstained.

The supposition is that McCann's murderer threw the bundle into the creek, which was then almost level with the trestle, expecting it to float away or sink, but that it became lodged against the trestle. It is supposed that the buttons which were cut off of the coat are at the bottom of the creek, and a search for them was begun Wednesday morning.

From the inside of the coat had been torn the tag bearing the name of the maker, and other efforts to conceal its ownership were evidently made.

Q. Now, Mr. Altheimer, in this play that was put on down town, did you, or to your knowledge, did Barrington or anybody for Barrington, ever consent to the putting on of this play, as it was played?

A. Positively not.

Q. You objected to it strenuously?

A. All times; no question of that, sir.

Q. Now, I will ask you if you remember a conversation in the town of Clayton here in reference to the Barrington case with Father Busch?

A. I do; part of it.

Q. Father Busch is the Catholic priest in this city?

A. Yes, sir.

Q. What expressions of opinion did you hear at that time with reference to the guilt or innocence of the defendant?

391 The opinion was as to his guilt.

Q. What did he say?

A. Well, the people seem to think him guilty.

Q. What did Father Busch say?

A. He thought him guilty.

Q. Thought he was guilty?

A. Yes, sir.

Q. Did he say anything about Barrington taking any chances to get away?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

Q. Well, change it. What further did he say, Mr. Altheimer?

A. That in all probability they would hang him here.

Q. That is all.

Cross-examination by Mr. JOHNSTON:

Q. Where was it you had this conversation with Father Busch?

A. If you will tell me the road west of the court-house—it was near his church—across the street from his church, near a large tree, right on the edge of the board sidewalk.

Q. You say that he said he thought he was guilty or that he was guilty?

A. Yes, sir; thought he was guilty.

Q. Is that as near as you recollect?

A. Yes. sir.

Q. Didn't he state if the matters contained in the papers could be proven there was no question about his guilt then?

A. No, he seemed to have taken an opposite view to Mr. Grover and myself. He said, "They will get him," or words to that effect.

Q. Was his impression based on his knowledge of facts in the case or what he read in the papers?

A. It seemed to have been a combination of both.

Q. Then you say he seemed to have a knowledge of the facts in the case?

A. As to that point I couldn't assume. I could only judge from what he said at that time.

Q. Did he say that he knew anything about the facts in the case?

A. He didn't say that; no.

Q. Then how is it you say it was based on both his know-
392 ledge and what he read?

A. I presumed he, being a minister in the county, had spoken to a great many and had formed his opinion from opinions of others.

Q. You just draw that as a conclusion, that he must have?

A. Well, you are hardly able to rebut such conclusion.

Q. That is all, Mr. Altheimer.

Mr. C. H. LILLINGSTON, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. What is your first name?

A. Charles H. Lillingston.

Q. Where do you live, Mr. Lillingston?

A. Shrewsbury Park.

Q. In St. Louis County?

A. Yes, sir.

Q. What is your business?

A. Bookkeeper, N. D. Thompson Publishing Company, city of St. Louis.

Q. How long have you lived in the county?

A. Thirteen years.

Q. Since the 28th of June last up to the present time you may state whether or not you have heard any expressions of sentiment or opinion concerning Frederick Seymour Barrington, the defendant, in reference to his guilt or innocence in this case?

A. Yes, sir; heard quite considerable.

Q. You may state what that expression has been?

A. Well, generally speaking, I should say that the sentiment, so far as I have heard it, was against Barrington.

Q. That was the sentiment expressed, was it, Mr. Lillingston, by these people?

A. Yes, sir.

Q. To what extent have you heard sentiment expressed in that way?

A. Well, I couldn't say as to that. I heard it talked of a great deal. I only remember of one definite case.

Q. Well, state what that was.

A. I was talking with a gentleman one day and joking with him about being on the jury, and he said he couldn't be on the Barrington jury because he was prejudiced against him.

393 Q. Have you ever, in any of these discussions that you have heard—have you ever heard, outside from his attorneys, have you ever heard anything expressed in Barrington's favor?

A. I don't know that I have. I couldn't say that I have not.

Q. You have heard it discussed quite a good deal, have you not, Mr. Lillingston?

A. Well, to some extent—not a great deal.

Cross-examination by Mr. JOHNSTON:

Q. Mr. Lillingston, when was the last time that you heard this case discussed?

A. I don't know that; I couldn't say.

Q. Now, most all these discussions that you heard were about the time that the crime was alleged to have been committed—along about the same time?

A. Well, quite a lot of it. This special case I mention was about five or six weeks ago.

Q. And who was the last person that you discussed this with?

A. Oh, I don't know—I couldn't say that.

Q. Was it in the county of city of St. Louis?

A. In the county, I think.

Q. You think it was?

A. This special case which I mentioned was a conversation that took place in the city but it was with a gentleman that lives in the county.

Q. You say that you can not remember whether you remember anyone saying anything in favor of the defendant or not, but you wouldn't swear that you have?

A. No; I don't remember anything of that kind.

Q. Did you hear anyone express themselves that they doubted whether McCann was dead or not?

A. No; I don't think I have.

Q. Did you hear them say that they thought it was some kind of a scheme to make money out of it?

A. I don't recollect anything of the kind.

Q. These parties that you say you heard discuss it, do you know whether or not they formed their opinions that they expressed

394 upon facts in the case or upon presumptions that the newspapers had stated the truth?

A. I couldn't say as to that.

Q. Did any of these parties that you talked to know anything about the facts in this case?

A. I think not.

Q. You think not? You only remember of one instance where you recollect the man's name and what was said?

A. Only one instance.

Q. That is all.

Judge PETER KERTH being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. Mr. Kerth, where do you reside?

A. I live down in Carondelet Township, Mehlville, St. Louis County.

Q. How long have you lived there?

A. All my life—sixty-four years, pretty near.

Q. Since the 28th of last June have you heard any expressions of sentiment by the people concerning the defendant Barrington in this case, as to whether he was guilty or innocent?

A. No, sir.

Q. Never heard it discussed?

A. No, sir. Oh, I have heard it discussed.

Q. Never heard any expressions as to his guilt or innocence?

A. No, sir.

Cross-examination declined.

Mr. GROVER. I desire to offer the testimony of witnesses St. Clair and Copeman, and might recall Mr. Altheimer.

COURT. If these parties come in by 1 o'clock you can offer their testimony. Will that be satisfactory?

Mr. GROVER. Yes.

COURT. Then, in the meantime, the State may proceed.

Defendant rests.

395 (The State to sustain the issues on its part offered evidence as follows:)

State's evidence.

Mr. J. Q. MURPHY, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. J. Q. Murphy.

Q. Where do you live, Mr. Murphy?

A. I live in Kirkwood.

Q. What is your business?

A. Feed business.

Q. In the business you are in there do you come in contact with people of Maplewood and that vicinity?

A. Yes, sir.

Q. Do you do any business besides feed?

A. Dairy business.

Q. And you come in contact with people in a business of that kind?

A. Yes, sir.

Q. Since the 28th of June, the date that the killing of McCann is alleged to have been done, have you heard the case of the State vs. Frederick Seymour Barrington discussed?

A. Yes, sir; a great deal.

Q. What has been the substance of those discussions?

A. Lots of them seemed to think he was guilty and others seemed to think it was a kind of an advertising scheme between him and McCann, that he would finally show up some time.

Q. Have you heard this matter discussed lately?

A. No, sir; it has kind of died out.

Q. The time you heard it discussed was along about the summer?

A. When the papers were full of it; yes, sir.

Q. What would you say is the prevailing opinion now from the discussions you hear in your community?

A. Well, I never thought enough of it to decide on that. It seems to be pretty quiet to me.

Q. These expressions of opinion that you have heard—do you know whether they were based on any knowledge of facts in the case or upon newspaper reports?

A. Mostly newspaper reports.

396 Q. The defendant, was he known in your community personally?

A. No, sir.

Q. You know of no one that knew him or had any acquaintance with him?

A. No, sir; I don't.

Cross-examination by Mr. GROVER:

Q. This advertising scheme, they thought that that scheme existed between Barrington and McCann, did they not?

A. Yes, sir.

Q. That is all.

Mr. AUGUST SCHROEDER, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. August Schroeder.

Q. Where do you live?

A. Manchester.

Q. And what is your business?

A. Cigar manufacturer.
Q. In your business you get all over St. Louis County?
A. Yes, sir.
Q. Visiting your customers?
A. Yes, sir.
Q. How long have you been in business?
A. Well, about twelve years now, myself.
Q. Now, Mr. Schreoder, in your travels about through the county and in your neighborhood there at Manchester have you heard, since about the 28th of June last, the case of the State of Missouri against Frederick Seymour Barrington discussed by people with whom you have met? Has there been any expressions of their opinions as to the guilt or innocence of the defendant?
A. Well, I have heard it discussed, but not to say that I can remember any remarks of guilty or innocence in any way, one way or the other.
Q. Have you heard this matter discussed lately?
A. Not lately; no, sir.
Q. Do you remember how long it has been since you have
397 heard the matter discussed at all?
A. Oh, my recollection—the majority of it has been when this happened, shortly after it happened.
Q. Do you know whether or not parties who expressed themselves at that time based their opinions upon any knowledge of the facts in the case?
Mr. GROVER. We object. He says he don't remember.
Q. Do I understand that at the time the matter happened you heard the talk about it?
A. Yes, sir.
Q. Can you remember of any expression of opinion one way or the other as to the guilt or innocence of this defendant?
A. Not that I remember.
Q. And you have heard nothing of it lately at all?
A. No, sir.

Cross-examination declined.

Mr. E. B. NACE, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name?
A. E. B. Nace.
Q. Mr. Nace, you are marshal of the city of Webster Groves?
A. Yes, sir.
Q. In this county?
A. Yes, sir.
Q. How long have you been marshal?
A. About eight years.
Q. Mr. Nace, since about the 28th of June, along about the time

that the papers contained accounts of the murder of James P. McCann, I will ask you if you have heard the case of the State of Missouri against Frederick Seymour Barrington discussed among the people in your vicinity?

A. I have heard it mentioned somewhat—not discussed a great deal.

Q. What has been said, if you remember, by any persons who discussed it as to their opinion as to the guilt or innocence of the defendant?

A. Well, it isn't very frequent that you hear anyone in our
398 part of the town give such expression, that the man was guilty or innocent.

Q. Have you heard this matter discussed lately?

A. Not frequently.

Q. At the time that you heard it discussed—about when was that?

A. About the time it occurred—like any newspaper article—it dies out.

Q. Did you hear any discussion of the matter recently?

A. No, sir.

Q. Do you recollect having heard any one express themselves of the belief that the defendant was guilty?

A. Never.

Cross-examination by Mr. GROVER:

Q. Did you hear any one express the belief that he was innocent?

A. No, sir.

Q. At the time the play was put on the boards to be down at Havlin's did you hear it discussed?

A. No, sir.

Q. You never heard any expressions as to his guilt at all. Did you ever hear anybody express themselves that they thought that body found out there at Bonfil's was McCann's body?

A. No; I don't think I ever did.

Q. Did you ever hear them discuss Barrington himself in any way?

A. Well, no; nothing only just about what the newspaper article might be.

Q. Did you ever hear any of them say that they thought from what had been said in the newspaper articles that Barrington must have been a pretty tough citizen, or something of that kind?

A. No, sir.

Q. Did you ever hear them say either that he might be a bad man or vice versa?

A. No, sir.

Q. Did you ever hear any expression at all?

A. Not a great deal; only people asked me for my opinion.

Q. When they asked you for your opinion what did you tell them?

399 Mr. JOHNSTON. We object.

COURT. You may answer.

A. Well, I never expressed an opinion. I never judge a man guilty until he is found guilty.

Q. Did any of the officers ever confer with you—any of the officers of the State or of this county ever confer with you with reference to the Barrington case?

A. No, sir.

Q. Ever ask you to look up any evidence in it at all?

A. No, sir.

Q. Nothing concerning it either way?

A. No, sir.

Q. What remarks did you ever hear them make after reading these newspaper articles?

A. Well, the citizens of Webster Groves are generally business men of St. Louis and I meet them at train time or in the mornings as they go to the city and frequently meet them as they return. That is the class of citizens we have at Webster, and any newspaper article, as it appears daily, I am frequently asked "What do you think of these matters?" And that is about the extent of it. They want my opinion more than expressing their own.

Q. How frequently did that occur?

A. Quite frequently.

Q. Did they ever make any statement at all to you about what they thought about it?

A. I don't know as I ever remember of anyone expressing themselves.

Q. Well, you say it has not been discussed recently at all?

A. No, sir. Not that I have heard; no.

Q. That is all.

Mr. JOHN J. BRAUN, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Mr. Braun, your first name is John Braun?

A. Yes, sir; J. J. Braun.

Q. Where do you live?

A. Fern Ridge, St. Louis County.

Q. What is your business?

A. Mercantile business.

400 Q. In your business, do you come in contact with a great many people in that section of the county?

A. Yes, sir.

Q. Out on the Olive street road?

A. Yes, sir.

Q. From the latter part of June up to this time I will ask you if you have heard this case of the State of Missouri vs. Frederick Seymour Barrington discussed as to the guilt or innocence of the defendant?

A. I have heard it discussed, but I can't say that they thought he was guilty or innocent.

Q. Have you heard any expressions of opinion by anyone that said they believed the man was guilty?

A. No, sir.

Q. Have you heard anyone express themselves as not believing that he was guilty?

A. I have not.

Q. When was it you heard this matter discussed?

A. It was shortly after the occurrence.

Q. Have you heard it discussed recently?

A. No; not recently.

Q. About how long ago has it been since you heard this matter talked about?

A. I couldn't say definitely—probably six or eight months ago.

Q. Do you know whether or not any of the parties who expressed themselves in any way had based their expressions upon facts that they knew or upon the presumption that what they read in the papers was true?

A. I couldn't say where they would get their knowledge from. I presume they got it out of the papers.

Q. Was the defendant Barrington known in your neighborhood, to your knowledge?

A. No, sir.

Q. Never known there by anyone that you know of?

A. Not that I know of.

Cross-examination by Mr. GROVER:

Q. Did you ever hear that discussed out there that they thought Barrington had been married a good many times?

Mr. JOHNSTON. We object to that as irrelevant. That has no tendency to show that the community would be prejudiced against the man in the case where he is charged with homicide.

401 That has no relation whatsoever to this crime.

COURT. You may answer. It is proper.

A. No; I never heard that discussed.

Q. Did you ever hear them discuss the fact as to whether or not this body found out at Bonfils was McCann's body?

A. I have heard that discussed; yes, sir.

Q. What did they seem to think about it?

A. They seemed to think it was.

Q. That will do.

Mr. HENRY CHOMEAU, being duly sworn, on the part of the plaintiff testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Your name is Henry Chomeau?

A. Yes, sir.

Q. Mr. Chomeau, where do you live?

A. I live here in Clayton.
Q. What is your business?
A. Examining land titles.
Q. How long have you been in that business?
A. I think we began in '82.
Q. In your business do you come in contact with people from all over the county?
A. Yes, sir.
Q. I will ask you if you have heard the case of the State of Missouri vs. Frederick Seymour Barrington, from the latter part of June up to the present time, discussed as to the guilt or innocence of the defendant?
A. I have heard it discussed frequently.
Q. What was the substance of the discussion?
A. Well, I myself saw that at the beginning, when the publications came out in the daily papers here, that there was a general expression of horror expressed by those who would read it, at such a thing, and so forth, and so forth.
Q. Have you heard any expression as to the guilt or innocence of the defendant?
A. Yes, sir. I have heard a few men—I could not say how many, but it is more or less indefinite in my mind what I did hear as
402 to time and place and individual and the number—but I heard at that time a few men say that they thought he was guilty; but I have heard more men say since that time that he wasn't guilty. I have not heard a man pronounce him guilty since it first occurred. Of late I hear them say, "Well, I don't think that fellow is guilty. I don't think they can make a case."
Q. Those that did express themselves as believing that he was, do you know whether they based their opinion on facts in the case or from what they read in the newspapers?
A. I never heard anything being said yet as a fact.

Cross-examination by Mr. GROVER:

Mr. Chomeau, those people that expressed themselves that they thought he was insane, as you said, they said they didn't believe that they could make a case against him?
A. That is what I mean.
Q. That they couldn't make a case against him?
A. Yes, sir.
Q. The statements that you have heard have been more in reference to the ability to prove the defendant guilty than as to the fact of his real innocence?
A. I don't understand.
Q. Well, I will ask you that question over. Those that you have heard speak in his favor, they have said that they didn't believe a case could be made against him rather than to say that they believed he didn't commit the offense?

A. I wouldn't like to say that they expressed an opinion that they believd he was innocent, but that the State couldn't make a case.

Q. That is it.

A. I can't recollect the gentleman's name—it is within ten days—a gentleman in talking briefly with me brought up the subject and made such a statement as that.

Q. Did you hear any of them say in the beginning in reference to newspaper articles that it seemed like this man was guilty?

A. In answer to the prosecutor, it seemed to me that I could recollect that I heard men while in their sense of shock, might have said that they thought he was guilty and ought to be hung.

403 Q. Have you heard it discussed lately, Mr. Chomeau?

A. Well, as I say, not so much. It has been, lots and lots, and I may say in the last two months that I only heard two or three people talk about it. In the last two or three months I have heard several persons speak of him, but not discuss the case at all. Some gentlemen say, "I have been out to Clayton and called up to see Lord Barrington;" just a passing remark, like that.

Q. Those expressions as to his guilt—when was the last you heard of that kind?

A. My impression is that all of that was at the time of the daily publications there when testimony—when the papers were producing what they claimed was testimony.

Q. Now, you may state, if you know, whether or not the people have ceased to discuss this matter because they are confirmed in their opinions or not. Whether or not they have made up their minds and ceased to discuss it any more, or changed their minds.

A. In the first place, he is not known in this county. In the second place, Mr. McCann isn't known in this county, and naturally people have lost interest in both.

Q. You don't know what the reason is they ceased to discuss it, further than that?

A. No, sir; except that other things have come up.

Q. In this ceasing to discuss the matter you have not noticed any change in opinion as to the real guilt or innocence of the defendant?

A. Only in reference to proof.

Q. That will do.

404 Mr. JOHN G. WEBER, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. John G. Weber.

Q. You live in Clayton?

A. Yes, sir.

Q. What is your business?

A. Hardware and supplies.

Q. How long have you lived in this county?

A. I was born and raised here.

Q. You were assessor for a number of years?

A. Yes, sir.

Q. In your business, do you come in contact with people generally over St. Louis County?

A. Yes, sir.

Q. You know a good many of them?

A. Yes, sir.

Q. Since about the latter part of June last have you heard persons discussing and expressing themselves as to the guilt or innocence of Frederick Seymour Barrington, charged by indictment with the murder of James P. McCann?

A. I have been asked by people, who thought I was posted here, "Well, what are you going to do with Lord Barrington," but I can not recall to my mind any definite expression from any of them as to what they thought. In fact, I didn't charge my mind or memory with it, and I can't recollect anyone expressing their opinion.

Q. Can you recollect anyone that you heard discussing the case that believed the defendant was guilty?

A. No, sir. I tried to remember this morning. I remember shortly after it occurred, several discussions as to what the object was, that it might be a sort of advertisement to be used at the World's Fair. I recollect several advancing that idea—that they thought that it might turn out that way.

Q. Have you heard this matter discussed recently?

A. Not right recently; no. I think the interest, as far as I can see, has apparently died out like. No one seems to care particularly.

Q. At the time you heard these discusions, when was that?

405 A. That was along during the summer, a month or so after it occurred, that I had more people ask me as to what they were going to do with "Lord" Barrington.

Q. Do you know whether or not the defendant is personally known in Clayton or in the vicinity around here?

A. I think not.

Q. Did you ever hear of any one knowing him here?

A. No, sir; I never have. I recollect of one or two cases of gentlemen coming here who had formerly lived here and asking how they could get to see him—said they had never met him and would like to see him.

Q. Do you know whether James P. McCann was known here?

A. I think not.

Cross-examination by Mr. GROVER:

Q. Mr. Weber, a great many of the people in this county go up there to the race track and attend the races?

A. That I couldn't tell you. I have been there once in two years.

Q. When you were there, there were St. Louis County people there?

A. Yes, sir; several that I knew.

Q. Do you know anything about Mr. McCann—whether or not he was a man was at the races very frequently?

A. I don't know anything about that. I couldn't say.

Q. Now, this matter about advertisement, when the people stated that they thought this was an advertisement for the World's Fair, did they think Barrington was in there?

A. They seemed to base their opinion on that—that he was formerly connected with a saloon in the city—"You will find out that that is the way it will turn out. McCann will turn up at the proper time."

Q. It was an advertising scheme in which Barrington was connected?

A. Yes, sir.

Q. Now, did you ever hear anything favorable expressed of the defendant otherwise?

A. No; I can't say that I have.

406 Q. Now, did you ever hear anything unfavorable said about it other than this matter?

A. No, sir. Nothing any more than what I have often heard of a man that got into trouble and would be locked up in jail.

Q. Did you hear any general discusion about his having trouble with his wife and being put in the workhouse?

A. Yes, sir; several times and considerable sympathy had been expressed for him in that instance.

Q. And had any been expressed for his wife?

A. Not particularly; no. They thought, from what I can recollect—they didn't seem to think that she was entitled to very much sympathy.

Q. How much of that did you hear discussed?

A. I don't know of any particular instance, only speaking—not having charged my memory or expecting to ever be called upon to testify in the matter, but I do say that I heard it discussed in regard to that a number of times—five or six times.

Q. That was here in Clayton?

A. Yes, sir.

Q. That is all.

Mr. JOHN CRECELIUS, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Your name is John Crecelius?

A. Yes, sir.

Q. You are a justice of the peace in Carondelet Township?

A. Yes, sir.

Q. Where do you live?

A. At Oakville.

Q. You were at one time chairman of the central committee?

A. Yes, sir.

Q. In your business do you come in contact with a large number of people in the county—south end?

A. Yes, sir.

Q. Since the latter part of June last, have you heard parties in your locality discussing the case of the State of Missouri vs. Frederick Seymour Barrington in regard to his guilt or innocence of the crime with which he is charged?

407 A. I can't remember that exactly.

Q. Do you know that anyone ever expressed themselves that they believed he was guilty?

A. I do not.

Q. The time that you heard it discussed, about how long ago was that?

A. Some time last summer, shortly after it happened, when the newspaper had it published.

Q. Has it been discussed in your neighborhood of Oakville recently?

A. I have not heard of it for two or three months.

Q. Do you know whether or not the defendant was known in your locality or neighborhood?

A. I don't think that he was ever heard of before.

Q. Was James P. McCann known in your locality?

A. No, sir. I never heard of him.

Cross-examination by Mr. GROVER:

Q. You were on the central committee for some time?

A. I was. I am on the committee, but not chairman.

Q. Republican central committee?

A. Republican central committee.

Q. Who did you ever hear say he thought he was innocent?

A. I said I didn't hear anyone express his opinion directly.

Q. Either one way or the other?

A. No, sir.

A. In a general way.

Mr. LOUIS P. HEMM, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Your name, Mr. Hemm.

A. Louis P. Hemm.

Q. You live in Kirkwood, St. Louis County?

A. Yes, sir.

Q. That is an incorporated city of this county?

A. Yes, sir.

Q. About how many inhabitants have you there?

A. About 3,500.

Q. What is your business?

A. I am in the drug business.

Q. How long have you been in Kirkwood?

A. Twenty-three years.

Q. Since the latter part of June last have you heard persons discussing the case of the State of Missouri against Frederick
408 Seymour Barrington, who stands charged with the murder of James P. McCann, with reference to the guilt or innocence of the defendant?

Q. You heard the matter discussed?

A. Yes, sir.

Q. How long ago since you heard this discussed?

A. About the time that the papers published notice of the crime.

Q. Have you heard it discussed recently?

A. Not recently; no.

Q. Now, what seemed to be the substance of these conversations as to any expression of opinions?

A. Well, simply taking the newspaper articles as published and the statements made about in this way, that if "Lord" Seymour Barrington was guilty, why, he ought to be punished; but I never heard anyone say that he was guilty.

Q. You never heard anyone say that he was guilty?

A. No, sir.

Q. Do you know whether or not defendant Barrington was known in Kirkwood or that vicinity?

A. Not to my knowledge.

Q. Or James P. McCann?

A. Not to my knowledge.

Q. These people that you heard express themselves, were their opinions based on facts or newspaper reports?

A. I think entirely on newspaper reports.

Cross-examination by Mr. GROVER:

Q. Now, Mr. Hemm, these persons that you heard express opinions, you say they based their opinions on newspaper reports?

A. Yes, sir.

Q. What opinions did they state?

A. Well, just in a general way, they stated that it was an awful crime and they thought that if he were guilty he ought to be punished. If "Lord" Seymour Barrington committed the crime as stated in the newspaper he ought to be punished.

Q. Did you hear any of them say that they thought he was guilty or believed he was guilty?

A. No, sir.

409 Q. Or innocent?

A. No, sir.

Q. Did you hear any of them say that they thought that that was McCann's body found out there at the quarry or not?

A. No, sir.

Q. Did you ever hear them discuss Barrington's general reputation for doing other acts or things besides this?

A. No, sir; except as the papers reported.

Q. Well, now, from these paper reports, didn't anybody seem to have any opinion over there about this matter at all?

A. They may have had, but I never heard them express it.

Q. Did you ever hear anything said in Barrington's favor over there?

A. No; I can't say that I did.

Q. That will do.

Mr. FRED AUTENRIETH, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Your name is Fred Autenrieth?

A. Yes, sir.

Q. You live here in Clayton?

A. Yes, sir.

Q. How long have you lived here?

A. About twenty-five years.

Q. What business are you engaged in?

A. I am connected with the Autenrieth hotel and livery company.

Q. In your business there you come in contact with large numbers of people from all over the county?

A. Yes, sir.

Q. Since the latter part of June last have you heard persons discussing the case of the State of Missouri vs. Frederick Seymour Barrington with reference to their opinion as to the guilt or innocence of the defendant?

A. I have; quite frequently.

Q. What has been the substance, as you recollect, of these conversations you heard?

A. In regard to the reports in the newspapers, some would say if the reports of the newspapers were right Barrington ought to have been hung; others said they didn't believe McCann was dead and that he would turn up some day.

410 Q. Did you ever hear anyone express the belief that they thought the defendant was guilty?

A. No, sir; I did not.

Q. Did you ever hear anyone say that he did not kill McCann?

A. I heard some say that they thought McCann would show up some day.

Q. How recently have you heard this matter discussed?

A. Well, in regards to the case, I guess five or six weeks ago—until they had this Seymour Barrington show in the city. I met some friends in the city and they talked to me about him.

Q. Did you hear anyone express themselves in relation to the show?

A. Yes, sir. They thought the show was a fake and a scheme to make money, gotten up by Mr. Barrington's attorneys.

Q. Did they say anything in relation to the defendant?

A. No; no more than I have ehard some of them say that the show wasn't what it ought to be, because there was no plot to it.

Q. Was the defendant here in Clayton, to your knowledge, before this alleged crime?

A. No, sir.

Q. Was James P. McCann known here?

A. Not to my knowledge.

Q. As far as you know, neither party was known in this community?

A. No, sir.

Cross-examination by Mr. GROVER:

Q. You heard those statements in which they said they thought the show was a fake and a scheme to get money, in which Barrington's attorneys were connected?

A. Yes, sir.

Q. That was since the show took place?

A. About the time the show took place.

Q. The statements of these witnesses, that they thought McCann would turn up, did they state why they thought he would turn up?

A. On account of newspaper reports. They got it from the newspapers. From the articles in the newspapers they made up their minds that he would show up some day.

Q. Did they think it was a scheme for the World's Fair?

411 A. I heard them express that too.

Q. In which Barrington was supposed to be connected?

A. Yes, sir.

Q. They said they thought if these newspaper reports were true Barrington was guilty?

A. Yes, sir.

Q. How did these reports compare with expressions of his not being guilty?

A. About equally. Most of them were by persons who came here from the city.

Judge G. W. WURDEMAN, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Your name is G. A. Wurdeman?

A. G. A. Wurdeman; yes, sir.

Q. You are judge of the probate court?

A. Yes, sir.

Q. Where do you live?

A. In Old Orchard.

Q. How long have you lived in St. Louis County and that vicinity?

A. About eighteen years.

Q. You are judge of the probate court?

A. Yes, sir.

Q. Does your business bring you pretty well over the county, as well as where you live?

A. Yes, sir.

Q. Since the latter part of June last I will ask you to state whether or not you have heard discussed the case of the State of Missouri against Frederick Seymour Barrington, charged with the killing of James P. McCann.

A. Yes, sir.

Q. In these discussions have you heard expressions of opinion by parties in regard to the guilt or innocence of this defendant?

A. Yes, sir.

Q. State what has been the opinion of these discussions.

A. Most of them have treated it in a jocular way—referred to the defendant as "lord," and something of that sort. I don't know of any expressions of ill will or prejudice against him.

Q. Have you ever heard any statements of prejudice?

Mr. GROVER. The statements of prejudice I ask to have
412 stricken out.

COURT. They may be stricken out.

Q. Well, have you heard anyone express themselves that they believed the defendant guilty of that murder?

A. No, sir.

Q. Do you know whether or not persons who discussed and expressed themselves on the case had drawn their conclusions from facts that they knew or upon the presumption that what the newspapers stated was true?

A. It seemed to be altogether from newspaper accounts.

Q. Do you know whether or not the defendant Barrington was known in your community before this affair?

A. Well, he was known shortly before, I think.

Q. In what manner?

A. Well, he was known through newspaper notoriety.

Q. Personally?

A. No; not personally.

Q. Do you know whether or not James P. McCann was known in this community?

A. No, sir.

Cross-examination by Mr. GROVER:

Q. He was known through newspaper notoriety?

A. Yes, sir; on account of that wedding or marriage.

Q. What seemed to be their opinion on that?

A. They seemed to think sort of six to one and half a dozen of the other.

Q. What did they seem to think about him?

A. There wasn't any particular opinion expressed on that, because people laughed at the thing.

Q. Well, did they think that Barrington was a deceiver and a crook?

A. Well, I have heard that expression, but it is mostly from talking to people that live in the city of St. Louis—they take more interest.

Q. You have also heard expressions of that sort from people in the county?

A. Once or twice, but not generally.

Q. Did you ever hear anything said favorable to Barrington among the people of the county?

A. I don't think I have.

413 Q. You havn't heard anything favorable, but you have heard unfavorable stuff?

A. I simply heard them discuss the case; that is all.

Q. Discuss Barrington in general, too?

A. Well, they did—just him in particular—an individual would ask how the "lord" is getting on, or how the distinguished prisoner is getting along over here at Clayton.

Q. In a kind of ironical way?

A. Jocular way—they generally laugh.

Q. Did you ever hear any of them say he was guilty?

A. I heard that, I think, about twice, and that was from people down in the city. I never heard it expressed in the county.

Q. You are one of the county officers?

A. Yes, sir.

Q. Probate judge?

A. Yes, sir.

Q. And you and Mr. Johnston, State attorney, and the sheriff all belong to the same political party?

A. I think we do; yes, sir.

Redirect examination by Mr. JOHNSTON:

Q. You have heard this matter discussed recently?

A. No, sir; I have only had this question asked me—how Barrington was getting along.

Q. The discussions that you referred to?

A. That was when it came out first.

Q. When last have you heard it discussed?

A. It has been several months.

Q. The interest has died out?

A. Yes, sir.

Recross examination by Mr. GROVER:

Q. Did you ever hear any of them say that they thought that that body out there was McCann's body?

A. I said that myself.

Q. You said that to St. Louis County people?

A. That was a theory I had for a month or two, and I finally got over that.

Q. That it was the body of McCann?

A. Yes, sir.

414 Redirect examination by Mr. JOHNSTON:

Q. You say that you got over that opinion?
A. Yes, sir; I changed my mind.
Q. And public opinion is changing that way?
A. Yes, sir.
Q. That will do.

Mr. J. WILL ANDRAE, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Your name is J. Will Andrae?
A. Yes, sir.
Q. And where do you live, Mr. Andrae?
A. I live in Clayton.
Q. What is your occupation?
A. Superintendent of schools in the county.
Q. How long have you been holding that position?
A. Two and a half years.
Q. How long have you lived in St. Louis County?
A. All my life.
Q. Mr. Andrae, in your business you come in contact with a great many people of St. Louis County?
A. Yes, sir; my duties are to drive and ride over different parts of the county visiting the schools.
Q. All the schools in the county?
A. Yes, sir.
Q. Since the last of June of last year have you heard any discussions among those with whom you come in contact relating to the case of the State of Missouri vs. Frederick Seymour Barrington as to the guilt or innocence of the defendant?
A. I did at first; I hear very little of it now.
Q. When was it you heard it?
A. At the time of the occurrence. The schools weren't in session just then, but I was in Clayton at the time and was not visiting schools until the 1st of September, but I heard it discussed here in Clayton and some on my rounds after I commenced visiting schools.
Q. Have you heard much recently?
415 A. No; I took it for granted that the people knew little about the case. They didn't discuss only what they heard and read in the papers.
Q. What seemed to be the opinion?
A. Persons were usually free in denouncing the enormity of the crime, but that is about as far as they would go.
Q. Do you recollect anyone stating that they believed the defendant was guilty of that murder?
A. No; they did not. They stated if the facts as the papers showed them were true and if he was guilty he ought to be punished, but I don't know of anyone stating he was guilty.

Q. Do you know whether the defendant was known in this community or in the community in which you went?

A. Not before this occurrence.

Q. Do you know if he was personally known?

A. No, sir.

Q. Do you know if James P. McCann was known personally in this community?

A. I never heard him spoken of.

Cross-examination by Mr. GROVER:

Q. This talk, you say, has died out lately?

A. Yes, sir. There is very little said.

Q. In its dying out, do you know whether that has changed their opinion or not?

A. They have gotten tired of the subject—other things to occupy their minds.

Q. You didn't notice any chanke of opinion as it died out?

A. In what way do you mean?

Q. Was there any change of opinion of the people as this thing began to die out with reference to Barrington's guilt or innocence?

A. Well, I don't know about that. Very few persons spoke of his guilt or innocence.

Q. You never noticed any change to the effect that he was innocent as this thing was dying out?

A. I heard one or two in the last week state that there was considerable doubt in his mind as to his guilt, because the possi-
416 bility was that McCann might show up.

Q. Did it seem that they thought it was a scheme between McCann and Barrington for McCann to show up, was that the idea?

A. I don't know as they expressed themselves on that at all.

Q. Why did they think he would show up?

A. That is more than I can tell you. I remember of one saying that they believed it was a sort of scheme in which somebody was securing notoriety.

Q. Did they think that Barrington was one of them?

A. From what he said I believe he thought so.

Q. Now, right after the crime was committed there was a generally prevailing opinion that this man was guilty, wasn't there?

A. I think not. The people of the county are generally too sensible to take all that they see or read in the newspapers to be truth.

Q. If they read statements in the newspapers which are questions and answers of what occurred in the case, will they not believe that?

A. Well, they may.

Q. What do they think as to whether or not he was in Newgate prison, as published in the Post-Dispatch of September 6th?

A. No, sir.

Q. Did you see that article?

A. I may have seen it. If you can give me anything more than

Newgate prison I might recollect it. I have seen so many of them I have forgotten quite a number.

Q. Did you see that article at the time?

A. I don't remember reading that. (Looking at paper.)

Q. You think that newspaper article would have no effect upon the minds of the people of this county?

A. I would have to read it first.

Q. You think an article of that kind would make no impression?

A. I would have to read the article.

Q. What about the picture?

A. Is this the magazine?

Q. Yes.

A. I wouldn't pay much attention to it.

Q. Well, you are a scholastic gentleman; what do you think
417 about the people generally?

A. The persons who read the magazine will give little credit. They know the magazine is made to be interesting.

Q. And you don't think this would have such an effect on the people of St. Louis County as to tend to prejudice them?

A. I don't think it would. That is the magazine, as I understand it.

Q. Don't you know these magazine articles are looked at by children?

A. Not in my home.

Q. When this public sentiment began to die out, you don't know that there was any change of sentiment in regard to the defendant?

A. No, sir.

Q. The enormity of the offense you say was denounced?

A. Yes, sir.

Q. The enormity of the offense was very shocking?

A. Yes, sir.

Q. It seemed to be one of the most enormous ever committed in this county?

A. It was pretty enormous.

Q. And public sentiment seemed shocked at its commission?

A. Yes, sir.

Q. Those people that said if the published facts were true they thought he was guilty, what character of people were they? Were they pretty intelligent people?

A. They are the general people of the county as you meet them from day to day.

Q. You are superintendent of public institutions in the county?

A. Yes, sir.

Q. And have been for a number of years?

A. Yes, sir.

Q. And you belong to the same party as the prosecuting attorney and the officers generally?

A. Not in my office. I am not elected at the general election.

Q. But you are a Republican in politics?
A. Yes, sir.
Q. And they are Republicans?
A. Yes, sir.

Redirect examination by Mr. JOHNSTON:

Q. You find the people of St. Louis County are a pretty intelligent class of people?
A. I think they are, exceptionally.

418 Recross-examination by Mr. GROVER:

Q. You went into the jail once?
A. Yes, sir.
Q. To see what kind of language he spoke?
A. Yes, sir.
Q. And you went in there to see if he was an Englishman or something else?
A. Yes, sir.
Q. What did you ascertain after you went in there?
A. I ascertained that he spoke pretty good English—consider him an intelligent man.

Mr. J. H. WETTERER, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Your name is John Wetterer?
A. Yes, sir.
Q. And you live out at Grover, in Meramec Township?
A. Yes, sir.
Q. That is the western part of this county?
A. Yes, sir.
Q. How long have you lived out there?
A. Well, I have lived out there most of my life time—I have been living out there between eight and nine years—between St. Louis and the county all my life time.
Q. What is your business?
A. Farmer.
Q. You come in contact with the people of that vicinity pretty generally?
A. Not very much.
Q. There is a store and a little village there where you live, isn't there?
A. Yes, sir.
Q. Since the latter part of June last have you heard any discussion among the people that you come in contact with of the case of the State of Missouri against Frederick Seymour Barrington as to opinion of guilt or innocence of the defendant?
A. I couldn't say that I have. Those men I spoke to said they would hate to be on the jury; they never expressed an opinion about it.

Q. Have you ever heard anyone say that they believed the
419 defendant was guilty?

A. Not that I remember.

Q. The time that you heard this discussed, was that about the time the offense had been committed?

A. Not right after; it was later on.

Q. How long after?

A. Two or three months; something like that.

Q. How recently has it been since you heard any discussion of that case?

A. Well, I haven't heard any. I never talk about the case. It don't interest me and I don't bother about it.

Q. Has the matter been discussed generally in your neighborhood?

A. Not much.

Q. Was the defendant, Frederick Seymour Barrington, personally known in your community?

A. No, sir.

Q. Or James P. McCann?

A. No, sir.

Q. Neither of the parties?

A. No, sir.

Cross-examination by Mr. GROVER:

Q. You say you heard the people say they would hate to be on the jury?

A. Yes, sir.

Q. What did they say about that?

A. That they wouldn't like to be.

Q. You don't suppose anybody would hate to be on a jury if they were going to turn somebody loose?

A. They never explained to me.

Q. You say you heard nobody express the opinion that they thought he was guilty? Did you ever hear anybody express the opinion that he was innocent?

A. No sir.

Q. Or about the defendant individually; the man Barrington?

A. No, sir.

Q. You never heard any opinions expressed about him at all?

A. No, sir.

420 Mr. DAVIS BIGGS, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name?

A. Davis Biggs.

Q. Where do you live?

A. Kirkwood.

Q. How long have you lived there?

A. Off and on for fifteen years.

Q. What is your occupation?

A. I am a lawyer.

Q. Since the 28th of June last up to the present time have you ever heard people of this county discuss this Barrington case that they are about to try here?

A. Yes. At the time the body of James P. McCann was found over there, after the arrest of Barrington, I heard some discussion in reference to the case.

Q. What expressions did you hear in these discussions, Mr. Biggs, concerning the defendant?

A. Well, I remember in going backward and forward of reading the newspapers and from statements given in the newspapers several men, in discussing the matter, stated to me that they thought Barrington was a bad man.

Q. You never did hear any expressions in his favor?

A. That was the only expression I heard one way or the other. We were talking about the case the time of the arrest.

Cross-examination by Mr. JOHNSTON:

Q. You never heard anyone state that it was their opinion he was guilty of the murder of James P. McCann?

A. No, sir.

Q. These statements that you did hear were about or after the time of the commission of the alleged crime?

A. Yes, sir.

Q. And it was from reading newspaper reports?

A. Yes, sir.

Q. You don't know whether any of the parties based their statements on any knowledge of the facts in the case or not?

A. No, sir; I don't know what they based it on.

421 Q. Was defendant Barrington known in that community?

A. Not that I know of.

Q. Or James P. McCann?

A. Not that I know of.

Q. Have you heard any discussion of the case recently?

A. No, sir.

Q. How recently has it been since you heard the discussion?

A. Soon after the commission of the crime.

Q. Since that time it has died out?

A. I haven't heard anything about it one way or the other.

(Court here adjourned for dinner.)

State resuming.

JOHN GRUENINGER, Jr., being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. John Grueninger.

Q. What is your business?

A. Traveling salesman for Charles H. Wittenberg, wholesale liquors.

Q. You live in Clayton?

A. Yes, sir.

Q. How long have you lived there?

A. Six years.

Q. Does your business take you about over the county?

A. Yes, sir.

Q. Since the latter part of June last, I will ask you have you heard any people with whom you have come in contact discuss the case of the State of Missouri against Frederick Seymour Barrington in which they expressed themselves as to his guilt or innocence?

A. I have heard them discuss the case, but never as to the guilt or innocence of Mr. Barrington.

Q. Have you ever heard anyone express themselves as saying that they believed the defendant was guilty of the murder of James P. McCann?

A. No, sir; I don't think I did.

Q. Those parties that you heard discuss the case, do you know whether or not the opinion they expressed was based upon a knowledge of the facts, or upon newspaper reports?

422 Mr. GROVER. We object.

COURT. Objection sustained.

Q. When was it that you heard this discussed—how recently?

A. Shortly after the occurrence.

Q. Have you heard it discussed recently?

A. Not in the last two or three months.

Q. Do you know whether or not the defendant, Barrington, was known personally in this community?

A. I don't think he was. I don't know.

Q. Do you know whether anyone knew James P. McCann?

A. No, sir.

Cross-examination by Mr. GROVER:

Q. You don't know whether anyone knew him or not?

A. No, sir.

Q. Do you ever go up to the race track?

A. I used to; yes, sir.

Q. A good many St. Louis County people go up there?

A. I met them there; yes, sir.

Q. There are two tracks, aren't there?

A. I am speaking of Delmar.

Q. Are there sometimes racing going on at two tracks here?

A. Not that I know of; no, sir.

Q. There are two tracks up there, aren't there?

A. One in the county and one in the city.

Q. There are several in the county and several in the city?

A. Delmar and Kinloch in the county, and the old fair grounds in the city.

Q. You have seen county people at these races right along?

A. I have at the Delmar; yes, sir.

Mr. JOHNSTON. We object to that as irrelevant.

Mr. GROVER. I want to show that Mr. McCann visited there and was a very public man and very free with his money and made many friends.

COURT. You may ask him.

Q. Did you ever see McCann there?

A. No, sir; never knew him.

423 Did you know Jim McCann?

A. No, sir.

Q. You knew he was a race horse man, didn't you?

A. Only what I saw in the papers after the killing.

Q. Wasn't the gentleman known among the sporting men in St. Louis County?

Mr. JOHNSTON. We object. There are no sporting men in St. Louis County.

Mr. GROVER. The court will take judicial notice of that.

Q. Wasn't McCann pretty well known by reputation as a sporting man?

A. I never heard of him; no, sir. I hardly went to the race track.

Q. Did you ever hear of McCann before this business?

A. No, sir; never heard anything about him.

Q. Did you ever hear anyone say that they thought Barrington was innocent?

A. No, sir.

Q. Didn't you ever hear anyone say whether they thought Barrington killed McCann or not?

A. No, sir.

Q. Did you ever hear anyone say anything about Barrington individually in any respect, with reference to this crime or anything else?

A. The only discussion outside of this crime was the marriage in St. Louis.

Q. You heard discussions about that?

A. Yes, sir; about Mr. and Mrs. Barrington.

Q. What were those discussions about Barrington—what did they seem to think about Barrington?

A. Some of them seemed to think it was too severe to be punished the way he was at that time.

Q. What did they say about the character of the man outside of that?

A. They didn't say anything about that.

Q. Did they think a man that entered into an escapade as Barrington did, according to the papers, was a pretty bad man?

A. I never heard it expressed.

Q. Never heard anything of that kind discussed?

No, sir.

424 Q. You go around the saloons of the county?

A. These trips I am only making in the last two months.

Q. Well, you never heard anything at any time in those public places about this man Barrington?

A. No, sir; only what was in the newspapers.

Q. Didn't they seem to say——

A. The general discussion was newspaper talk.

Q. It was newspaper talk, and all of these people you heard express themselves formed their opinion upon what they read in the newspapers?

A. I don't know what their opinion was.

Q. They were all fair-minded men?

A. Yes, sir.

Q. Didn't want to form an opinion in this case?

A. They may have, but never expressed it in my presence.

Q. You go over to Autenrieth's occasionally, at the corner?

A. Yes, sir.

Q. Did you ever hear it discussed over there?

A. Yes, sir; I heard it talked of after the crime.

Q. Never heard any expressions of opinion at all?

A. Not that I remember.

Q. You go over to Mr. Barthold's, also?

A. Yes, sir.

Q. Never heard any expressions there?

A. No, sir.

Q. So far as you know the expression is entirely silent as to the guilt or innocence of this man?

A. Yes, sir.

Q. What did they say about that body out at Bonfils being the body of McCann?

A. Some thought it was McCann and some thought it wasn't.

Q. I thought you said a moment ago that you hadn't heard that expression?

A. You asked me in regard to the guilt or innocence of Barrington.

Mr. Davis. We object. What bearing has that on this case?

Q. Some thought it was the body of McCann and some thought it wasn't?

A. Yes, sir.

Q. So you did hear them express opinions in that respect?

425 A. About the body.

Q. Those that thought it wasn't, did they say anything else about it?

A. No, sir. It naturally came up and some said "it is McCann's body" and some, "I don't think it is."

Q. Did they ever say they thought McCann would turn up?

A. Some did, yes, sir.

Q. For what reason did they think McCann would turn up?

A. They didn't say for what reasons. Some said I don't think it

is McCann's body and some said it was, and others said it was an advertising scheme—World's Fair came up and that McCann would show up at the proper time.

Q. And they thought the defendant was connected with that advertising scheme?

A. Yes, sir.

Q. You never heard anybody say they thought he was innocent?

A. No, sir.

Q. Did you ever hear anything favorable to him individually?

A. No, sir.

Q. Aside from the case?

A. No, sir.

Q. Or unfavorable?

A. No, sir.

Mr. CHARLES FISHER, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Your name is Charles Fisher?

A. Charles B. Fisher.

Q. Where do you live?

A. I live at Valley Park.

Q. St. Louis County?

A. Yes, sir.

Q. What business are you engaged in?

A. At present I am in the post-office.

Q. You were in the general merchandise business?

A. Yes, sir; for twelve years.

Q. When did you quit that?

A. A year ago the first of last January.

Q. Do you live there in Valley Park?

A. Yes, sir.

426 Q. How long have you lived there?

A. I have lived there for sixteen years.

Q. Do you come in contact with the people generally of that town and county?

A. Yes, sir.

Q. Since the latter part of June of last year, have you heard any of the people whom you met or came in contact with discuss the case of the State of Missouri against Frederick Seymour Barrington in which they expressed themselves as to the guilt or innocence of the defendant?

A. Yes, sir; to some extent. Opinions were divided on the question. Some would hold the defendant guilty at the time and some would not.

Q. Which seemed to be in the majority?

A. Well, at the first beginning, or after the case came up, it seemed like the party holding the defendant guilty was in the majority.

Q. You say that was the first?

A. That was the impression at that time.

Q. Has there been any change in that since?

A. Yes, sir; there has been some change in the public sentiment running generally.

Q. Which now would you say was in the majority?

A. I would say that the people were more willing now to look at the case in a different way, with less prejudice.

Q. Do you know whether these opinions were expressed upon any knowledge of the facts in the case, or were they based upon the presumption that what the newspapers said was true?

A. As far as I know, simply upon newspaper reports and general remarks.

Q. Was the defendant, Barrington, personally known in Valley Park to your knowledge?

A. No, sir.

Q. Was James P. McCann known there?

A. Absolutely not that I know of.

Q. Have you heard the facts of this case discussed recently?

A. Well, it has been discussed. Yes, sir; I heard it discussed.

427 Q. How recently have you heard this case discussed?

A. Well, as recently as the last questions came up in the papers; that is, showing the court proceedings—that would draw the attention of the public to it. I couldn't state the exact time.

Q. And recently, have you heard expressions of opinion as to the guilt or innocence of this defendant?

A. Yes, sir.

Q. What are those recent opinions that you have heard expressed?

A. Well, a good many people were of the belief that the party found wasn't McCann; that it probably was some other party.

Q. Are those now in the majority that you heard recently?

A. I wouldn't venture to say that.

Q. Have you heard more talk that way than the other way recently?

A. I couldn't hardly give an estimate of it, but the question is more n that favor now than it was at first.

Cross-examination by Mr. GROVER:

Q. The prevailing opinion at first was that the man was guilty?

A. At first; yes, sir.

Q. Now, after that, when you say sentiment began to change some nd you heard those expressions, were those expressions that you eard from the same people or from other people than those that had xpressed themselves before?

A. They possibly changed their minds about, some of the same eople.

Q. Some of the same people?

A. Yes, sir.

Q. But the majority that you heard about his guilt since weren't ne same people?

A. No, sir. Besides, the case has not been discussed as much lately as at first.

Q. Now, some of them thought that that wasn't McCann's body that was found out there?

A. Some of them were inclined to that belief.

Q. What do they think about it, as they express themselves?

A. Well, they think that McCann wasn't that party at all found in the quarry pond, and that it was some one else, and he would
427 probably turn up in the course of time.

Q. What do you think of his turning up, in pursuance of a scheme or how?

A. That has not been explained.

Q. Some of them think that he and Barrington are having a scheme, McCann to turn up later on as those things progress, and that Barrington is in the scheme with McCann?

A. I never heard anyone say that.

Q. Did you hear anything about there being a kind of World's Fair advertisement business in which Barrington was connected with McCann—what do they think, McCann would go away and not come back?

A. Some people believe McCann went away and that party found in the quarry was a different party.

Q. What do they say about his not coming back and this friend of his in jail?

A. I haven't heard.

Q. Don't they think it rather strange that he was going to come back and yet his friend here in jail?

A. I haven't heard.

Q. Don't the people think that there is an understanding between McCann and defendant Barrington that McCann is to come back again, as they express it?

A. I haven't heard that expression.

Q. As far as you heard it expressed that this was not the body of McCann and that McCann would in time turn up?

A. Yes, sir.

Q. How many did you hear express that?

A. I don't know.

Q. Not as many as believed in his guilt in the beginning, was there?

A. I think not.

Q. That is all.

Mr. ANTHONY DEUTSCHLAND, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. Anthony Deutschland.

Q. Where do you live, Mr. Deutschland?

A. In Meramec township, near Grover—west end of the county.

Q. What is your business?
A. Farmer.
429 Q. How long have you lived out there?
A. About thirty-two or three years.
Q. Since the latter part of last June have you heard any people that you come in contact with discussing the case of the State of Missouri against Frederick Seymour Barrington, in which they expressed their opinions or belief as to the guilt or innocence of the defendant?
A. No, sir; I did not.
Q. Did you ever hear that case discussed?
A. I seen it published.
Q. Have you ever heard anyone talk about the case?
A. No, sir. One might tell the other, "Have you seen the news in the paper what occurred."
Q. You never heard expressions of opinion one way or the other?
A. No, sir.
Q. Was defendant Barrington known in the neighborhood?
A. No, sir.
Q. Or was James P. McCann known in the neighborhood?
A. No, sir.
Q. Have you heard any discussion of it recently?
A. No, sir.
Cross-examination declined.

Judge FRANK L. STOBIE, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. What is your name?
A. F. L. Stobie.
Q. Where do you live, Mr. Stobie?
A. Wellston.
Q. How long have you lived there?
A. About fourteen years.
Q. What is your business?
A. Justice of the peace.
Q. You come in contact with the people of that vicinity considerable, Mr. Stobie?
A. Yes, sir
Q. Mr. Stobie, since the latter part of June of last year have you heard any discussions among the people whom you have met
430 relating to the case of the State of Missouri against Frederick Seymour Barrington?
A. Yes, sir.
Q. Have you heard any expressions among those people as to the guilt or innocence of this defendant?
A. Yes, sir; owing to the proximity of the crime to Wellston, I have.
Q. What have been the expressions?

A. Several believe him guilty and several not.
Q. When was this?
A. Right after the crime.
Q. How about since then?
A. I haven't.
Q. How long ago is it since you have heard any discussion of the facts?
A. Two or three months ago.
Q. Was the defendant, Barrington, known in your community personally?
A. No, sir.
Q. Was James P. McCann known in your community?
A. No, sir.
Q. I believe that you had a position at one of the race tracks for a while, didn't you, Mr. Stobie?
A. Yes, sir.
Q. I will ask you if you knew James P. McCann personally?
A. No, sir.
Q. Ever hear of him before?
A. No, sir.

Cross-examination by Mr. GROVER:

Q. You never heard of McCann at all before this matter came up?
A. No, sir.
Q. Which race track were you at, Judge?
A. Delmar.
Q. You say you haven't heard it discussed lately?
A. Not lately; no, sir.
Q. When it was discussed first, which was the prevailing opinion, that he was guilty or not?
A. The prevailing opinion seems to stay with him, as to his guilt.
Q. That he was guilty?
A. That he was not.
Q. The prevailing opinion in the beginning was that he was not guilty?
A. Yes, sir.
Q. Did he change afterwards?
A. No, sir; I think it was the same up to the last time I heard it spoken of.
431 Q. The majority of the expression?
A. Yes, sir.
Q. How much of the expression did you hear, Judge?
A. It was owing to the fact that a good many railroad employes were residents of Wellston and a great many of them witnesses in the case.
Q. Did you hear it discussed very often?
A. Several times in the barber shop.
Q. At Wellston?

A. Yes, sir.
Q. And the prevailing opinion was that he wasn't guilty?
A. Yes, sir.
Q. What did they seem to think about it?
A. They seemed to think it was a mystery of some sort that they couldn't explain.
Q. Did they think it was a scheme where McCann would turn up after a while?
A. Yes, sir.
Q. And many of those who had that opinion were people of that kind?
A. Yes, sir.
Q. The statements of the newspapers were discussed pretty generally, too, were they not?
A. Yes, sir.
Q. Did you hear any particular reference as to newspaper statements by these parties, discussing any particular subject brought up by the newspapers?
A. People over our way are decidedly against newspaper articles. They have expressed themselves frequently on that—disbelieving a great many of them.
Q. You are a justice of the peace up there?
A. Yes, sir.
Q. Have been how long?
A. Since the 20th of July.
Q. A Republican?
A. Yes, sir.

Redirect examination by Mr. JOHNSTON:

Q. Wellston and vicinity is one of the most thickly settled portions of the county?
A. Yes, sir.

432 Judge THEODORE HEEGE, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Your name is Theodore Heege?
A. Yes, sir.
Q. You are presiding judge of the county court?
A. Yes, sir.
Q. You live where?
A. In Kirkwood, St. Louis County.
Q. How long have you lived there?
A. Forty-four years.
Q. Judge, I will ask you, in your official position and your business you come in contact with a great many people in the county?
A. I do.
Q. Have you heard since the latter part of June last any discussion among the people whom you met relating to the case of the State of

Missouri against Frederick Seymour Barrington in which they have expressed themselves either as to the guilt or innocence of the accused?

A. I heard some. I was away North from July to September.

Q. You have heard some since September, since you came back?

A. I came back in September; yes, sir.

Q. What was the substance of what they would say?

A. Well, they would talk about it—say, Did you see that article in the paper this morning? and so on; and there were expressions made for and against the defendant.

Q. Did you ever hear anyone say that they believed the defendant was guilty of the murder of James P. McCann?

A. I did not.

Q. Was the defendant Barrington known personally in Kirkwood?

A. I think not.

Q. Was James P. McCann known there?

A. I believe not.

Q. How recently has it been since you have heard any discussion of the facts in this case?

A. In fact, I heard very little—maybe a month or six weeks ago.

Q. Those whom you have heard express themselves, do you know whether they made their statements on knowledge of the facts in the case or newspaper reports?

433 A. I couldn't say on what facts they made their statements.

Cross-examination by Mr. GROVER:

Q. You say there were expressions made for and against the defendant, Judge?

A. Yes, sir.

Q. Now, what were the expressions that were against him—what were they in substance?

A. Well, most of the expressions were not on account of the guilt or innocence of the defendant. It was more the opinion that he must be a very shrewd fellow.

Q. And kind of a crooked fellow?

A. Well, you may call it so.

Q. Something mysterious about him?

A. Yes.

Q. And this expression that was against him was anything but favorable to him, wasn't it?

A. Yes.

Q. Didn't they think that he was a bad citizen generally, was that the idea? I mean did they say it as indicated by their actions?

A. They didn't say those words "bad citizen."

Q. What did they say?

A. He was a pretty shrewd fellow—he tried to gain time—drag his trial along—talked that way.

Q. Now, those expressions that you heard in his favor, Judge?

A. Well, I heard two men say that it was only circumstantial evidence they had against this man.

Q. That was about all you heard in his favor?

A. That is about all.

Judge JOHN WIETHAUPT, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your first name, Judge.
A. John Wiethaupt.
Q. You are judge of the first district of the county?
A. Yes, sir.
Q. You live in Florissant?
A. Yes, sir.
Q. How long have you lived there?
A. Nineteen years.
Q. What is your business there?
A. General merchandise.

434 2. In your business there and in your official position do you come in contact with a great many people of the county?

A. Certainly, I do.
Q. I will ask you since the last of June have you heard discussions among the people whom you meet, of the case of the State of Missouri against Frederick Seymour Barrington, in which they expressed themselves in regard to his guilt or innocence?
A. Not as to his guilt or innocence. I heard talk of the case.
Q. How long has it been since you heard of any of the facts of the case discussed?
A. Not here lately; only after the crime was committed.
Q. Do you hear anything about it in your neighborhood now?
A. No, sir.
Q. Was the defendant, Barrington, known in Florissant?
A. No, sir.
Q. Was James P. McCann known in the neighborhood?
A. Not that I know of.
Q. Did you ever hear anyone say that they believed the defendant was guilty of that murder?
A. No, sir.
Q. Did you ever hear anyone say that they thought he was innocent?
A. I guess not.
Q. When you heard them discuss it what did they say, Judge?
A. Well, simply talked about the matters that they had seen in the papers.
Q. I suppose they discussed the matter did they, as to whether or not——
A. Just according to the newspaper reports.
Q. As to whether or not this fellow was married before to some one else before he married Miss Cochrane?
A. That is newspaper talk.
Q. You heard them discuss about his being in prisons in England?
A. Yes, sir; newspapers.
Q. That was discussed, too?
A. Yes, sir.

Q. And discussed whether or not he was the murderer of old
435 John Moog, downtown?

A. I don't recollect that.

Q. You did hear it discussed, whether or not he committed several other crimes?

A. Not more than in the newspapers.

Q. Didn't any of those people seem to give any idea of what they thought about that business?

A. No more than some make expression that if he did it he ought to be punished.

Q. In those expressions didn't any of them seem to have an opinion about it?

A. I don't think so.

Q. Do you ever hear anybody say out and out in words that that fellow ought to be hung?

A. No, sir.

Q. Did you ever hear them say that he was a bad citizen?

A. They may have made that expression, but I don't remember hearing it.

Mr. JOHN H. C. RUEGGE, being duly sworn, on the part of the State testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. John H. C. Ruegge.

Q. And your business.

A. General merchandise, and justice of the peace also.

Q. Where do you live?

A. Black Jack, Missouri.

Q. In the north part of the county?

A. Way up at the upper end.

Q. How long have you lived there?

A. Nine years.

Q. Do you come in contact with people in that part of the county?

A. Most of them.

Q. Have you heard any discussion since the latter part of June of last year, among the people whom you met, of the case of State of Missouri against Frederick Seymour Barrington, as to the guilt or innocence of the accused?

A. Only people come to Clayton and come back and say they saw the lord.

Q. Have you heard anyone say that the defendant was guilty of the murder of James P. McCann?

436 A. When it was first committed some said that there was a poor case against him.

Q. Have you heard it discussed recently at all?

A. No, sir; it has died out.

Q. Was the defendant Barrington known in that neighborhood personally?

A. No, sir.
Q. Was James P. McCann known in that neighborhood?
A. No, sir.

Cross-examination by Mr. GROVER:

Q. What did they say about Barrington, Mr. Ruegge?
A. When they come back from Clayton they say they saw the "lord" and one asked the other how he looked.
Q. Doesn't the newspapers circulate over there pretty thoroughly?
A. Yes, sir; it is a small place, but the farmers all get newspapers.
Q. What is the population?
A. There are no limits.
Q. Well, how many people come back and forth there?
A. I judge on Sunday I see about 100 or 150.
Q. And on other days you see less?
A. Yes, sir; some days I don't see ten.
Q. And on other days there are some people you see Sunday?
A. Yes, sir.
Q. It is not a very thickly settled part?
A. A great many travel back and forth.
Q. And some of them don't stop?
A. That is the last chance.
Q. It is the last chance. You have a wet grocery there?
A. Yes, sir.
Q. Don't you hear any of them make expressions of opinion regarding Barrington?
A. They seem to be in his favor. There was no witness to the case.
Q. That seemed to be the matter was in his favor?
A. Yes, sir.
Q. Did they talk about Barrington being connected with McCann in the scheme?
A. Yes, sir.
Q. Just the fact that there was no witness to the killing?
A. Yes, sir.

437 Mr. FREDERICK L. KERTH, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.
A. Fred L. Kerth.
Q. Where do you live?
A. Gardenville, St. Louis County.
Q. That is the southen part of the county?
A. Yes, sir; Gravois Road.
Q. Pretty thickly settled around your community?
A. Yes, sir.
Q. How long have you lived there, Judge?
A. Seventeen years last November.

Q. Since the latter part of June of last year, among the people whom you have met and came in contact with, have you heard any discussion of the case of the State of Missouri against Frederick Seymour Barrington, in which any of the people have expressed their opinion as to the guilt or innocence of the defendant?

A. I heard conversation among the people at home, but not to amount to anything. I remember one old gentleman down there, he thought that McCann would show up sometime. He don't believe that McCann is dead.

Q. Did you ever hear anyone state that they believed that man—defendant Barrington—had murdered James P. McCann?

A. No, sir; all I heard, if he was found guilty he ought to be punished.

Q. Was the defendant Barrington known personally in your neighborhood?

A. Not to my knowledge.

Q. Was James P. McCann known in the neighborhood?

A. Not to my knowledge.

Q. Those people that you heard discuss the case, do you know whether they discussed it on a knowledge of the facts in the case or on newspaper reports?

A. I suppose mostly what they read in the newspapers.

Q. Of course you don't know about that; that is just your supposition?

A. How is that?

Q. That they discussed it from what they saw in the news-
438 papers?

A. That is just my supposition.

Q. It may be some of those people that knew about the crime as far as you know?

A. I don't think they did.

Q. They may have been and you not know it, Judge?

A. Yes, sir.

Q. Did you ever hear anybody say they thought he was innocent?

A. Only as stated before. This old gentleman thought he would show up some time—that he was still alive.

Q. Did he state his reason?

A. He thought it was a scheme to make money out of.

Q. In which he thought Barrington and McCann and the whole bunch of them were connected?

A. Something of that sort.

Mr. WILLIAM BUERMANN, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. What is your name?

A. William Buermann.

Q. Where do you live, Mr. Buermann?

A. I live on the Manchester road, Rock Hill.

Q. That is in Central Township?
A. Yes, sir.
Q. North of Webster Groves?
A. Yes, sir.
Q. What is your business?
A. General blacksmith.
Q. The Manchester road is one of the principal roads in this county, is it not?
A. Yes, sir; I think it is.
Q. How long have you been in the business there?
A. Between twenty-seven and twenty-eight years.
Q. What is your business?
A. Blacksmith.
Q. Since the latter part of June of last year, among the people you come in contact with, have you heard discussed the case of the State of Missouri against Frederick Seymour Barrington, in which those whom you have heard discuss the case have expressed their opinions as to the guilt or innocence of the accused?
A. I think not. I don't have much time for anything of that kind in my line of business.

439 Q. Do you recollect having heard any expressions from any one regarding the case?
A. They may have said "Have you seen it in the paper?"
Q. You never heard anyone say that they believed the defendant was guilty of the murder?
A. Not that I know of.
Q. How recent has it been since you heard anyone discuss the facts of the case?
A. Well, when I was coming over here some one asked me where I was going.
Q. In your community how recent has it been since you heard anyone discuss anything about the facts in the case?
A. No, sir.
Q. Was the defendant known in this community?
A. No, sir.
Q. Or James P. McCann?
A. No, sir; I don't know him.

Cross-examination by Mr. GROVER:

Q. You say you didn't know him?
A. No, sir.

440 Mr. CHARLES GRAF, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.
A. Charley Graf.
Q. Where do you live, Mr. Graf?
A. Florissant.
Q. What is your occupation?

A. City marshal.

Q. How long have you lived there?

A. Seven years the first of February coming.

Q. Mr. Graf, since the latter part of June last, people with whom you have come in contact, have you heard any discussions among them relating to the case of the State of Missouri against Barrington in which anyone has expressed their belief as to the guilt or innocence of the accused?

A. I can't say I have as to the guilt or innocence. I heard it talked over.

Q. What you think was, they discussed the case?

A. Probably read the paper at the time and saw this occurred.

Q. Did you ever hear anyone state that they believed the defendant was guilty of the murder?

A. No, sir.

Q. Was the defendant known in your neighborhood—Barrington?

A. I don't think he was.

Q. Was James P. McCann known there?

A. Not to my knowledge.

Q. Has the matter been discussed recently in your community?

A. I heven't heard anyone speak of it, I guess, for three or four months.

Q. Florissant is incorporated, is it?

A. Yes, sir.

Q. What is the population?

A. The last census gave us a thousand and fifteen.

Cross-examination by Mr. GROVER:

Q. Did you ever hear anyone say anything in favor of the defendant up there?

A. I heard them say that they didn't think they could convict Mr. Barrington.

441 Q. That was rather the conviction rather than his absolute innocence?

A. I never heard anyone say he was guilty or innocent either.

Q. Nobody has ever made a statement at all as to whether or not the body found at the quarry was McCann's?

A. I haven't heard the statement.

Q. Did the officers of the city or county come up to see you at the time the body was found, or at any time near there?

A. No, sir.

Q. You never was called into the case?

A. No, sir.

Mr. LEE BARTON, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. Lee Barton.

Q. What is your business?
A. Publish a newspaper.
Q. What paper?
A. The Clayton Argus.
Q. Published here in this county?
A. Yes, sir.
Q. Mr. Barton, I will ask you if, in your business, you come in contact with a good many people in St. Louis County?
A. Yes, sir; I did.
Q. Since the latter part of June last year have you heard any discussion among the people you come in contact with in which they have expressed themselves as to their belief in the guilt or innocence of Frederick Seymour Barrington, charged with the murder of James P. McCann?
A. Yes, sir.
Q. What has been the discussion?
A. The majority of it seemed to be favorable to him.
Q. What do they say?
A. I have heard lots of people say they didn't think he was guilty—something of that kind. A good many think McCann isn't dead.
Q. Do you know whether the defendant is known personally in this vicinity or to any of these people you talked to?
A. I think not.
442 Q. Was James P. McCann known in this vicinity?
A. Not that I know of.

Cross-examination by Mr. GROVER:

Q. Mr. Barton, those folks that think he is not guilty think McCann will show up?
A. Yes, sir.
Q. That is some sort of a World's Fair scheme?
A. I have heard some speak that way.
Q. Did you ever hear anybody say that they believed in the absolute innocence of this man, or is there a statement that they think he can not be convicted?
A. I think I have heard them say that they didn't think he was guilty.
Q. How did they compare with the people that you heard that expressed themselves and believed that he is guilty, which is the larger number?
A. The majority of the opinion seems to be favorable to him.
Q. Do the people believe—those that you heard express themselves—do they believe that any crime has been committed?
A. I suppose they do.
Mr. JOHNSTON. The question is what they said about it.
A. They know there was a body found out there.
Q. Don't the majority of the people that you have heard talk on that subject believe that the body was unlawfully killed?

A. I don't know that I ever heard them speak of that point. I have heard a great deal of talk both ways.

Q. You say you believe that the majority of them are favorable?

A. That is the way they talk.

Q. That majority is made up of two classes of people, one think that it is a scheme and that McCann will turn up, and the other, that Barrington isn't guilty?

A. I never heard about the scheme, at least very lately.

Q. How many people have you heard say that Barrington was guilty?

A. I couldn't estimate the number. I guess I see forty or fifty people a week.

443 Q. Do they all express themselves on this?

A. Oh, no; I couldn't say how many.

Q. Do you think very many have expressed themselves to you that they think Barrington is innocent?

A. Quite a number.

Q. Do you know all those people that made that expression?

A. Only just by—a great many I met for the first time. I am new in the county, and they call to see me on business and introduce themselves.

Q. Some of them you don't know whether they were residents of the county or not?

A. They were residents. They take my paper at certain post-offices.

Q. Can't you give us a kind of a rough estimate of the number that thought Barrington was innocent?

A. I couldn't say.

Q. As many as six?

A. Oh, yes; more than that. I couldn't say how many—probably forty or fifty.

Q. How many have you heard say they thought he was guilty?

A. I have heard a few say directly they thought he was guilty. I heard many say they thought he was a bad man if he committed the murder.

Q. What do they say about Barrington himself, aside from the crime?

A. I don't know that I ever heard him discussed outside of the crime.

Q. What do they say about Barrington's character—what kind of a fellow he is—did they ever express themselves about that?

A. I heard them talk about him being a smart man in connection with this marriage.

Q. Have you ever heard any of them express themselves as to their belief in his being in Newgate prison?

A. No, sir.

Q. Did you ever hear them say he was this man Barton, of England?

A. I think not.

Q. Have you ever heard them discuss that this man Barrington was a bigamist—been married several times?

A. No.

Q. Did you ever hear them discuss whether or not he was the murderer of old man John Moog?

A. No, sir.

444 Q. Did you ever hear them discuss whether or not he was Jack the Ripper?

A. No, sir.

Q. Did you ever hear that he committed any other crime than the one he is charged with now?

A. I don't recollect that I have.

Q. Did you ever hear any discussion as to whether or not he had deceived Miss Grace Cochrane into a marriage with him, pretending to be "Lord" Barrington?

A. I have heard it talked about.

Q. What opinions did they express of a fellow like that?

A. They seemed to blame her more than him.

Q. While they blamed her more than him, what did they say about him?

A. They thought he had bad treatment in that case.

Q. They thought that he had been badly treated in that case?

A. Yes, sir.

Q. Did they think he was a man justified in doing things like that, even though he was a better man than she was a woman?

A. They didn't blame him for marrying her if he could.

Q. What did they seem to think about a deed of that kind?

A. I don't think I heard them discuss the deed.

Q. They didn't seem to have anything against him on account of having done a trick of that kind?

A. No; I don't think they did. I don't think I ever talked to a man that censured him for that at all.

Q. That is all.

Judge GEORGE HORNECKER, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. George Hornecker.

Q. Where do you live, Judge?

A. Eureka, St. Louis County.

Q. In the western part of this county?

A. Yes, sir.

Q. Judge, you were formerly one of the judges of the county court for a number of years?

A. Yes, sir.

445 Q. How long have you lived at Eureka?

A. Fifty years.

Q. And what is your business, now?

A. I am farming.

Q. Judge, since the latter part of last June have you heard people with whom you have come in contact discuss case of the State of *the*

State of Missouri against Frederick Seymour Barrington, in which discussions they have made expressions as to their belief in the guilt or innocence of the defendant?

A. At the time the report was out that this crime was committed there was some discussion going on, but I didn't notice any difference; that is, form any opinion as to the guilty part or the innocent part.

Q. Did you ever hear anyone express themselves as saying that they believed the defendant was guilty of the murder of James P. McCann?

A. No, sir.

Q. Have you heard this case discussed recently, at all?

A. None for the last three months.

Q. Was the defendant Barrington personally known in your vicinity?

A. No, sir.

Q. Was James P. McCann personally known there?

A. No, sir.

Q. Have you heard any discussion of it recently?

A. Not lately.

Q. Those discussions that you heard, when were they?

A. Directly after the news came out about the crime being committed.

Q. Those that discussed it, do you know whether they based their opinions on facts or on newspaper reports?

A. Newspaper reports.

Cross-examination by Mr. JONES:

Q. Those discussions took place shortly after the 28th of June, or on or about that time?

A. Yes, sir.

Q. Where were those discussions had, in your immediate household?

A. There in the neighborhood—in the stores.

Q. Well, you didn't discuss it much at all?

A. No.

Q. Have you been in any crowds where it has been discussed?

446 A. Well, we get together there in the store and in the post-office.

Q. In those discussions, when the parties expressed the belief that Barrington was not guilty, did they think that he was innocent of the crime charged, or that there had been no crime committeed.

A. They didn't express themselves as to his guilt. They thought they would leave that to further discoveries and further testimony to prove his guilt or his innocence—give him a fair trial.

Q. Did you ever hear anyone express a favorable opinion of Barrington?

A. Neither favorable or unfavorable.

Q. Not much discussion that you heard at all?

A. I heard some, like generally in the neighborhood there is discussion going on.

Q. You don't go around very much?

A. I travel a good deal back and forward around Eureka. I am there every day, mostly around the stores and public places.

Q. Did you ever hear anyone say that they thought that Barrington had a bad reputation, or that he had been connected with other crimes?

A. No; Barrington wasn't known until this crime was committed.

Q. Those newspaper reports which you say they gathered their opinions from, did they derive their opinion from any other facts than those mentioned in the papers?

A. Not that I know of.

Mr. D. C. THOMPSON, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. D. C. Thompson.

Q. Where do you live, Mr. Thompson?

A. St. Louis County, Wellston.

Q. Near Wellston?

A. Yes, sir.

447 Q. Near what they call Hillside?

A. Hillside.

Q. That is a thickly settled community there?

A. Yes, sir.

Q. What is your occupation?

A. Deputy collector, St. Louis County.

Q. Do you come in contact pretty well with the people of your community?

A. I guess I do.

Q. How long have you lived over there?

A. Pretty near fifteen years.

Q. Since the latter part of last June have you heard any discussions among the people whom you come in contact with of the case of the State of Missouri against Frederick Seymour Barrington, in which discusions people have expressed any opinion as to their belief in the guilt or innocence of the accused?

A. Well, I have heard it discussed in regard to the crime.

Q. In those discussions, have you heard any direct expressions of opinion as to the guilt or innocence of the accused?

A. Well, I have heard it about in this way, the man that done it ought to be hung.

Q. Have you heard anyone ever say that they believed the defendant Barrington to be guilty of the murder of James P. McCann?

A. No, sir.

Q. About when was it that you heard those discussions that you mention?

A. I hear it pretty near every day right in the office.

Q. And you heard those people discuss it pretty generally?

A. Yes, sir.

Q. Was the defendant Barrington known in your neighborhood personally?

A. Not that I know of.

Q. Was James P. McCann known?

A. Not that I know of.

Q. Those people whom you have heard discuss it, do you know whether they spoke from their knowledge of the facts in the case, or was it based on newspaper reports?

A. Entirely on newspaper reports.

448 Cross-examination by Mr. JONES:

Q. You are employed in one of the county offices?

A. Yes, sir; collector's office.

Q. How long have you been employed in one or the other office of the county?

A. Seven or eight years in the collector's office and a couple in other offices.

Q. And most of the discussion that you speak of was had in Clayton or at your residence?

A. Most of it in the county.

Q. You have heard it discussed, and it was stated that the man that committed the crime ought to be hung, and you inferred from that that a crime had been committed?

A. Yes, sir.

Q. Wasn't there anything to infer from their language to make you believe that Barrington committed the crime?

A. No, sir.

Q. Or that he had not committed a crime?

A. I have heard that a good many times—a number of times.

Q. Can you recollect anyone that said that?

A. No, sir; I cannot.

Q. Was that lately that the statement was made?

A. Not lately; some time ago. I heard *then* say that McCann would show up.

Q. The people who made the statement that they thought Barrington had not committed the crime thought no crime had been committed?

A. I couldn't say that.

Q. You have heard them say that they believed he was the right man?

A. I can't recollect that. I never paid much attention to that. They come into the office and ask me about it and want to see him, and I tell them to go to the sheriff. I didn't talk with them about him.

Q. Did anyone express a favorable opinion when they came down there?

A. I don't know.

Q. They regard him as a curiosity on account of the crime they believe he has committed?

A. Yes, sir; I suppose that is it.

449 Redirect examination by Mr. JOHNSTON:

Q. Are there any of them express themselves as believing that he committed the crime?

A. I don't know.

Q. Then they regard him as a curiosity on account of a crime that he is supposed to have committed?

A. Yes, sir.

Recross-examination by Mr. JONES:

Q. Mr. Thompson, from the opinion that you have, or from statements that were made by people coming here to visit prisoners who are in jail, do they come to see him merely out of curiosity to see a man in there charged of some celebrated crime or belief that he is the man that committed the crime?

A. I couldn't say that. All I can say, they ask to see Barrington.

Q. Isn't it because they think Barrington is the author of a crime out of which arose a good deal of feeling?

A. I couldn't say that.

Q. The crime has aroused the interest of the people of this county greatly, and a great many of them have come here to see Barrington on account of this alleged crime?

A. On account of the crime.

Q. That will do.

Mr. ROBERT SARGENT, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name?

A. Robert Sargent.

Q. Where do you live?

A. About a mile and a half southeast of Valley Park.

Q. What business are you engaged in?

A. Farming.

Q. How long have you lived there?

A. Pretty near my whole life with the exception of a year or two.

Q. Do you come in contact with pretty near all the people of

450 Valley Park and that vicinity?

A. I meet a good many.

Q. Since the latter part of last June have you heard any discussion among the people you come in contact with in which they express their belief in the guilt or innocence of defendant Barrington?

A. Yes, sir.

Q. What has been the subject of their expression?

A. After the crime was committed they say it was a horrible crime or something like that, but that is about all.

Q. Did you ever hear anyone express themselves that they believed the defendant Barrington was guilty of the murder of James P. McCann?

A. I think not.

Q. Have you heard this matter discussed recently?

A. Yes, sir.

Q. Was the defendant Barrington known in your community personally?

A. No, sir.

Q. Was James P. McCann?

A. No, sir.

Q. Those whom you have heard discuss the case, do you know whether they base their opinions on facts or on newspaper reports?

A. I couldn't say. They never told me their reasons or what grounds they had for saying anything.

Cross-examination by Mr. JONES:

Q. Mr. Sargent, you say at the time this crime was committed it created a great deal of feeling in yoru community, naturally against anyone who perpetrated such a crime?

A. Yes, sir.

Q. Those people there believe that a crime has been committed?

A. Yes, sir.

Q. And they formed that opinion from reading it in the newspapers?

A. They are newspaper reports.

Q. And didn't any of them express the opinion that Barrington was the man—that they had caught the right man—that he was connected with it anyway?

A. No, sir.

Q. Did anyone express the opinion that he was innocent and that they had caught the wrong man?

451 A. Not at that time. You don't seem to understand me. I never heard anyone say that he was innocent.

Q. Did you ever hear anyone say that they thought he was guilty?

A. No, sir; I think not.

Q. A short time ago you, accompanied by a friend, visited the defendant here in jail?

A. Yes, sir.

Q. Who was that party?

A. His name was J. K. Foster.

Q. What was his object in visiting the defendant?

A. Well, I was going over here at Clayton, and he was at my house on a visit. I know the man for seven or eight years, and I came over here on some business, and he says: "I will take a trip over with you," and on the way coming over he says: "We will go in and see Mr. Barrington," he says: "I never seen him and I would like to see him," and I had never seen him myself, and we were curious enough to get the jailer to take us in to see him.

Q. Why did he wish to see him—did he know McCann?

A. Yes, sir; he said he did.

Q. Did he say how long he had known him or how he had known him?

A. Yes, sir. He said he knew him from Kentucky, and he knew McCann there.

Q. How long since he had seen McCann in Kentucky?

A. He didn't tell me.

Q. After seeing Barrington in jail, did he express any opinion as to his guilt or innocence?

Mr. JOHNSTON. We object, unless he was a resident of the county or city.

Q. (COURT.) He lives in Kentucky, does he?

A. I don't know whether he does or not. He is engineer on the Frisco. He stayed about my place. He was on a visit there for about a week. He was off duty and came out to see me.

COURT. He may state.

Mr. JOHNSTON. I withdraw the objection.

A. He did. As we walked out of the jail, going over the street, I made the remark, "What do you think of Mr. Barrington?"
452 and he said, "They will never convict that man." I says, "What makes you think so?" He says: "I believe McCann is alive right to-day, and I believe he will turn up in the proper time."

Q. Is that all he said?

A. Yes, sir.

Q. He never said why?

A. No, sir.

Q. Since that time—since you heard him express that opinion, has that anything to do with the change of opinion in your community as that story became known?

A. I don't know as it has.

Q. You told that to other people?

A. Not a great many.

Q. That is known, at least, in your community and your town, is it not?

A. I wouldn't say that it has been circulated there.

Q. You have told it, though?

A. I have, to a few.

Q. To a few?

A. Yes, sir.

Mr. PHILIP ST. ONGE, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Your name is Philip St. Onge?

A. Yes, sir.

Q. Where do you live?

A. Centaur.

Q. In the extreme western part of the county?

A. Yes, sir.
Q. On the Olive Street road?
A. Between the Olive Street and Manchester road.
Q. What is your business?
A. Farming, principally.
Q. How long have you lived there?
A. All my life. I was born and raised there.
Q. Do you meet the people pretty generally in your community there—come in contact with them?
A. Yes, sir; I see most of them.
Q. Since the last part of June of last year have you heard any of the people whom you meet discuss the case of the State of Missouri against Frederick Seymour Barrington, in which they expressed themselves as to their belief in the guilt or innocence of the accused?
453 A. Well, only what they have read in the papers.
Q. How long ago has it been since you have heard any of those discussions?
A. Oh, that has been quite a while ago.
Q. About how many months?
A. I don't know. I haven't heard much of it lately—may be a month or two ago.
Q. When they would express themselves what would they say, if you remember, in substance?
A. Well, they would say that they had read it in the paper—seen this and that about Barrington in the paper; seemed to think that he must be guilty of the crime from what they read.
Q. Do you know whether any of them ever expressed themselves from a knowledge of any of the facts in the case?
A. No, sir.
Q. It was based entirely on what they read in the newspapers?
A. Yes, sir.
Q. Was Barrington known in the community?
A. No, sir.
Q. Was James P. McCann?
A. No, sir.

Cross-examination by Mr. JONES:

Q. Mr. St. Onge, you don't know whether it was solely on newspaper accounts?
A. Well, they mentioned something about what they read.
Q. Would they always do that?
A. Yes, sir.
Q. Some of those men might have known something about the place up there where this crime was committed?
A. I don't think so.
Q. Some of them might have talked to some of the witnesses in the case and you not know it, might they not?
A. Probably they did; I don't know.
Q. That is all.

Mr. HENRY JACOBSMEYER, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Your name is Henry Jacobsmeyer?

A. Yes, sir.

454 Q. Where do you live, Mr. Jacobsmeyer?

A. About 2½ miles north of Blackjack.

Q. That is in the northern part of the county?

A. Yes, sir.

Q. How long have you lived there?

A. Oh, I was born in the neighborhood.

Q. And what is your business?

A. Farming.

Q. Since the latter part of June of last year, Mr. Jacobsmeyer, have you heard any people whom you have met or came in contact with discussing the case of the State of Missouri against Frederick Seymour Barrington charged with the killing of James P. McCann, in which they have expressed themselves?

A. No, sir; only from the newspapers.

Q. Have you heard anyone directly express themselves as having a belief as to the guilt or innocence of the accused?

A. That he was guilty.

Q. Have you heard anyone express themselves?

A. I have not.

Q. Have you heard anyone express themselves that they believed he was innocent?

A. No, sir.

Q. Was it known in your neighborhood?

A. No, sir.

Q. Was James P. McCann known there in your neighborhood?

A. Not as I know.

Q. Those people whom you heard discuss it and express themselves, did you know whether they spoke from any knowledge of the facts or was it based on newspaper reports?

A. There was nothing talked of that I know.

Q. You haven't heard it spoken of recently at all?

A. I don't know as I spoke to anyone.

Q. You haven't heard anyone else speak about it?

A. No, sir.

Q. You get around in your neighborhood pretty well up there?

A. Through the season. Three weeks in thrashing time I get out through that part of the county—over it pretty well.

Q. What month is that?

A. July and August. Those two months I have been there thrashing about twenty years.

455 Cross-examination by Mr. GROVER:

Q. Mr. Jacobsmeyer, you say some of them said they thought he was guilty?

A. No, sir.

Q. Did you ever hear anybody say: "Well, I have read the newspaper accounts, and from the accounts I believe that fellow is guilty?"

A. No, sir.

Q. You never heard them say that?

A. No, sir.

Q. Did you ever hear them say whether they thought McCann was dead?

A. No, sir.

Q. Did you ever hear them say anything about the defendant himself, as to whether or not he was a crook or a bad man or anything like that?

A. No, sir.

Q. Nothing at all?

A. No, sir.

Q. (COURT.) You say they done it all when you were threshing?

A. No, no.

Q. That is all.

Mr. AUGUST HARTWIG, being duly sworn, on the part of the State testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. August Hartwig.

Q. Where do you live, Mr. Hartwig?

A. In the northern part of the county.

Q. Up about Blackjack?

A. Yes, sir.

Q. What is your business?

A. Farming.

Q. You were a former judge of the county court?

A. Yes, sir.

Q. How long have you lived in that neighborhood?

A. Thirty-four years.

Q. Do you get around among the people of your neighborhood pretty generally?

A. Get all over St. Gerdinand Township.

Q. Since the latter part of June last, have you heard people whom you come in contact with discussing the case of the
456 State of Missouri against Frederick Seymour Barrington, in which discussion they have expressed their belief in the guilt or innocence of the defendant?

A. Not direct.

Q. Well, in any discussions, what in substance have they said?

A. Well, a good many said that was true what they say in the papers, then he was guilty and ought to be punished.

Q. Have you heard anyone express themselves that they believed he was guilty of the murder?

A. No, sir.

Q. Was he known personally in that locality—Barrington?

A. No, sir.

Q. Or James P. McCann?

A. No, sir.

Q. How recently has it been since you heard any discussion of the case?

A. Shortly after the crime was committed. I havn't heard a single man talk of it for the last four or five months.

Cross-examination by Mr. JONES:

Q. Did you ever hear much discussion about it at all?

A. At that time—shortly afterwards, when the papers published it every day—then the people would talk about it.

Q. The people read the papers and expressed the opinion that if he committed——

A. If that was true what they saw in the papers he ought to be punished.

Q. Were they of the opinion that a crime was committed?

A. They believed what the paper said. That is all they knew about it.

Q. Did you ever hear anyone pass a favorable opinion of the prisoner—that he was innocent?

A. No, sir.

Q. A victim of circumstances or anything to that effect?

A. No, sir.

Q. They seemed to be against the prisoner?

A. I haven't heard any expression of that kind.

Q. It was all founded on newspaper reports?

A. That was all the people knew about it.

457 Q. They read the papers pretty closely?

A. They are all Germans. They only read one paper, and that is the County Wacta.

Q. That will do.

Mr. ALBERT JACOBSMEYER, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your business.

A. Albert Jacobsmeyer.

Q. Where do you live?

A. I live at Spanish Lake.

Q. That is in the northern part of the county?

A. Yes, sir.

Q. And your business?

A. I am a farmer.

Q. You have been deputy assessor up there?

A. Yes, sir.

Q. Do your duties take you over that part of the county?

A. Yes, sir.

Q. How long have you lived in the county?

A. All my life.

Q. Since the last of June have you heard any expression of opinio among the people whom you came in contact with where they e pressed their opinion as to the guilt or innocence of defenda Barrington?

A. Yes, sir; after this crime was committed.

Q. What, in substance, would they say?

A. It would amount to about this, if Barrington was the guil party and proven of having committed that crime, that he ought be punished.

Q. Do you know whether that opinion was based on a knowledge the facts or on newspaper reports?

A. Only from newspaper reports.

Q. Was the defendant, Barrington, known in your community?

A. Not that I know of.

Q. Was James P. McCann?

A. Not that I know of.

Q. How recently has it been since you heard any discussions of t fact?

A. Quite awhile ago.

Q. Have you heard any shortly after the alleged commission of t crime?

458 A. Yes, sir; shortly after the alleged commission of t crime I did.

Q. You say you haven't heard any recently?

A. No, sir.

Q. How long since you heard anything said about it?

A. That was in June or July, something like that. Everythi seems to be forgotten now.

Q. That is all.

Cross-examination by Mr. JONES:

Q. You say that at the beginning you heard expressions and sin then you have heard nothing of it. Do you know if that died o because of any change of sentiment?

A. No, sir; I don't know that. I have heard nothing recently.

Q. You have heard the people make unfavorable expressions towa the defendant?

A. Well, no; I can't say that I have heard anything unfavora said of the defendant.

Q. You never heard them mention his name in connection with a other crime?

A. I don't know that I ever heard that discussed. I saw that in t paper myself.

Q. You never heard anyone refer to this marriage?

A. No, sir; I don't think I have.

Q. Did anyone ever express themselves favorably towards him that you heard talk about him?

A. I can't say that I have heard that.

Q. Did they think that a crime had been committed?

A. Certainly; we are so near the place that we know the crime has been committed.

Q. And didn't you ever hear the expression when Barrington was arrested that they had gotten the right party, or one of the parties?

A. No, sir.

Q. And he would get what he deserved for the crime?

A. No, sir.

Q. How far is Spanish Lake from the scene of the crime?

A. Well, I guess it is about twelve miles. I said it was so
459 near. Of course I travel over that section of the country so much I consider it near, while others wouldn't consider that in the immediate vicinity.

Q. Was there no expression in the vicinity of Bonfils and Spanish Lake showing feeling against the defendant at that time?

A. No, sir; I can't say that.

Q. Were they impassive about the matter?

A. Bonfils; I didn't get around there till the last part of August and it had pretty well died out there. I don't know that any of them spoke about the subject, except I asked them about the quarry and the crime committed there.

Q. Didn't they say it was an infamous crime?

A. Certainly.

Q. Didn't they express any feeling at all about Barrington and his arrest at that time?

A. I can't say that they did; no. I don't think anyone was positive that he committed the crime.

Mr. JOSEPH KRAUS, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. What is your name?

A. James Kraus.

Q. Where do you live?

A. Bellefontaine.

Q. Out in the western part of the county?

A. Yes, sir.

Q. What is your business?

A. Road overseer. That is all the business I got now.

Q. What was your business formerly?

A. Saloon.

Q. In your business do you come in contact with people who travel along that road and in your vicinity?

A. Oh, yes.

Q. How long have you lived out there?

A. Pretty much all my lifetime, off and on.

Q. Since the latter part of last June, Mr. Kraus, have you heard any discussion among the people whom you come in contact with wherein they have expressed an opinion as to their belief in the guilt or innocence of defendant, Barrington?

460 A. Yes sir; I have heard a little of it.

Q. What has been, in substance, the expression that they would use in talking about the case?

A. Some said they thought he was guilty and some said they didn't think he was.

Q. How long ago has it been since you have heard these expressions?

A. I haven't heard any in the last few months.

Q. What time are they confined to—those expressions that you have heard?

A. Right after it occurred.

Q. Those who expressed themselves as believing him guilty, do you know whether they spoke from any knowledge of the facts in the case or were their opinions based on the assumption that the newspaper reports were true?

A. That the newspaper reports were true.

Q. Was defendant, Barrington, known in you neighborhood?

A. No, sir.

Q. Was James P. McCann known in your neighborhood?

A. No, sir.

Q. Have you heard any report of the facts in the case recently?

A. No, sir.

Q. Heard nothing at all?

A. No, sir.

Cross-examination by Mr. JONES:

Q. Mr. Kraus, you have stated that some thought he was guilty and some not?

A. Yes, sir.

Q. How was that divided, or was it about even?

A. It is pretty hard to say—pretty much even.

Q. You heard as many say they thought he was guilty as that he was not?

A. Yes, sir.

Q. Since that time do you know of any change in the opinions of anyone?

A. No, sir; I didn't bother myself much about it.

Q. You didn't pay any attention?

A. No, sir.

Q. You are an employe of the county?

A. Yes, sir; road overseer.

Mr. JOHN PREHN, being duly sworn on the part of the State, testified as follows:

461 Direct examination by Mr. JOHNSTON:

Q. State your name?
A. John Prehn.
Q. Where do you live?
A. Webster Groves.
Q. How long have you lived there?
A. Thirty-eight years.
Q. What is your occupation?
A. Carpenter.
Q. Mr. Prehn, do you get around pretty generally among the people of Webster Groves and between here and Webster?
A. Yes, sir.
Q. Between this and the latter part of last June have you heard any of those with whom you have come in contact discuss the case of the State of Missouri against Frederick Seymour Barrington, wherein they have expressed an opinion as to the guilt or innocence of the defendant?
A. I heard it discussed considerably right after the crime had been committed. Not since that, much.
Q. In those discussions what, in substance, would they be—what would they talk about?
A. They seemed to have read in the newspapers and were reading from time to time so-called evidence that perhaps had been gathered, and they would comment upon it and say if that man—if that is proven against him he ought to be punished.
Q. Do you recollect anyone having expressed their opinion as to what they believe?
A. I can't say that I ever heard that.
Q. Those whom you have heard discuss it, do you know whether they speak from a knowledge of any facts in the case, or was it newspaper reports?
A. Nothing more than newspaper reports, as far as I know.
Q. Was defendant Barrington known in the vicinity of Webster?
A. No, sir.
Q. Was James P. McCann known there?
A. I have been there thirty-eight years. I don't know of anyone else.
Q. You have heard this case discussed recently—the facts in the case?
462 A. No. I don't believe for the last two or three months.
Q. That is all.

Cross-examination by Mr. JONES:

Q. You say you are a carpenter at Webster Groves?
A. Yes, sir.
Q. Did you ever follow any other business there?
A. I have been justice of the peace there years ago—about ten years ago.

Q. And you heard people express the opinion that if the defendant was guilty he ought to be punished?

A. Yes, sir.

Q. That was from reading the newspaper reports?

A. I suppose.

Q. You don't know?

A. No.

Q. They believed, however, that a crime had been committed?

A. They knew that a body had been found there. I don't know what they knew.

Q. They believed that to be the body of James P. McCann?

A. Must have, I suppose.

Q. Did no one at that time express the opinion that Barrington was the man who had committed the crime?

A. The man that was charged with it. They said that they saw in the paper that he was charged, and if that was true then they felt that he ought to be severely punished. I can't say that there was any feeling against Barrington personally—I can say against that if it was proved against him.

Q. Did you ever hear anyone say that they thought Barrington was innocent—that the charge was not true?

A. I heard them say that they would have to prove it.

Q. You say that was when?

A. Shortly after the body was found there.

Q. Haven't you heard it discussed since then—the Barrington case?

A. No; only people out here said not very long ago that the case was to come up and that his attorneys would ask for a change of venue.

Q. Did you ever hear any expressions—anyone say anything
463 about any delay in the trial?

A. No.

Q. Say that they thought he ought to be convicted?

A. I don't remember that I heard that.

Q. Did you ever hear anyone make any remark about this play, "The Desperate Lord Barrington," put on at Havlin's Theatre?

A. No. All I know about that is what I heard myself.

Q. A number of people from your town attend these St. Louis theatres, do they not?

A. That I can't tell. I know I don't.

Q. You know some of them do?

A. I know we got people there that go to theatres.

Q. You don't know of anyone that attended this particular play?

A. No, sir.

Q. They might have attended it and you not know?

A. Yes, sir.

Mr. MARTIN ZIMMERMANN, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Your name is Martin Zimmermann?
A. Yes, sir.
Q. Where do you live?
A. Clayton.
Q. How long have you lived in Clayton?
A. About fourteen years.
Q. You are not in any active business, now?
A. No, sir.
Q. You come in contact with the people who come to Clayton and who live here pretty well?
A. Yes, sir.
Q. Since the latter part of last June have you heard any discussion of the case of the State of Missouri against Frederick Seymour Barrington?
A. Very little.
Q. Have you heard anyone express an opinion in this discussion as to whether they believed the defendant guilty or innocent?
A. No, sir; not exactly.
Q. What have they said in substance in talking about it?
A. Some talked he might be guilty, and some he might be innocent.
464 Q. Those who said he might be guilty, do you know whether they spoke with a knowledge of any facts in the case?
A. No, sir.
Q. What was it based upon?
A. Just general talk. General talk that you hear in a blacksmith shop.
Q. Was Barrington known in your neighborhood?
A. No, sir.
Q. Or James P. McCann?
A. No, sir.
Q. Have you heard the facts in this case discussed recently?
A. Not recently.
Q. How long ago since you heard that talk?
A. Right after it happened.

Cross-examination by Mr. JONES:

Q. You have heard people say that they thought he was guilty?
A. Yes, sir, a few; they talked.
Q. You don't know on what they based their opinion, do you?
A. No.
Q. They just said that they thought he was guilty?
A. Yes, sir.
Q. You have heard more than two people say that?
A. I couldn't tell how many.
Q. You have heard it said more than once?
A. Yes.

Mr. FREDERICK D. HOEFER, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. What is your name?

A. Frederick D. Hoefer. They call me Dan for short.

Q. Where do you live?

A. Luxenburg, St. Louis County, Missouri.

Q. What is your business?

A. Dramshop.

Q. How long have you been living there?

A. About four years and four months and a half.

Q. In your business, Mr. Hoefer, do you come in contact
465 with the inhabitants of your county?

A. Yes, sir.

Q. And people passing on the Le May Ferry road?

A. Yes, sir.

Q. Since the latter part of June have you heard people discussing the case of the State of Missouri against Frederick Seymour Barrington?

A. Only newspaper talk.

Q. Have you heard anyone express their belief in the guilt or innocence of the defendant?

A. Some say yes and some say no, and a good many say, to the matter, "they don't believe he is guilty after all."

Q. How recently have you heard this discussed?

A. After the crime.

Q. What is the majority of the opinion—guilty or innocent?

A. The majority thinks you got to prove it to them before they think he is guilty.

Q. Do you know whether they express themselves on a knowledge of the facts in the case or from what they read in the newspapers?

A. What they read in the papers.

Q. Do you know whether Barrington was known in your neighborhood personally or not?

A. No, sir.

Q. Was James P. McCann known there?

A. No, sir; not that I know of.

Q. Have you heard the facts in this case discussed in your locality recently?

A. No, sir; I haven't heard it since they first found the body and claimed it was McCann. That is about as late as I heard it discussed; since then it has died out, and I believe the sentiment of the people believe that McCann will show up some time.

Cross-examination by Mr. JONES:

Q. You stated at one time that there was about an equal division of opinion, Mr. Hoefer?

A. Yes, sir; newspaper opinion.

Q. Do you know whether they formed their opinion from the newspapers?

466 A. I think they did. You never hear them speak of it now. I don't think there is any party I know down there that would pay any attention to newspapers.

Q. You don't know where they got their information of the case?

A. Mostly got it from newspapers.

Q. You suppose they did?

A. That is the only chance they had to get it.

Q. You don't know?

A. No, sir.

Q. Those people that thought he was innocent, did they think McCann would show up?

A. Yes, sir. They thought it was some notoriety to get the newspapers to sell and a World's Fair scheme to make things go on.

Q. They thought it was sort of an affair all around—newspapers and Barrington and McCann?

A. Yes, sir; and they think that yet to-day, that McCann will show up.

Q. There are some there that think the crime was committed, aren't there?

A. Well, I don't know. I never heard anybody express themselves to say that they actually thought that he committed the crime. They found a body, and they didn't know whether it was that man's body or whose it was.

Q. Did they ever give any expression of feeling in regard to Barrington personally?

A. No, sir; I never heard anybody express their sentiments, whatever they were. I believe it is more favorable than unfavorable.

Q. This play that was put on at Havlin's called "The Desperate Lord Barrington," was that advertised in your town?

A. Yes, sir; and quite a number went up to see it, but thought that it was more of a fake play than real truth in it. They didn't believe in it.

Q. Did they think that Barrington had something to do with that?

A. Not the way they spoke—they didn't think that the man had anything to do with anything of that kind.

Redirect examination by Mr. JOHNSTON:

Q. Luxenburg is one of the thickly settled communities in

467 this county?

A. Yes, sir.

Q. Right outside of the city limits?

A. Yes, sir. I live about two blocks outside of the city limits—a population of probably fifteen or eighteen hundred; around there.

Q. That will do.

Mr. GROVES M. LANE, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name, please.

A. Groves M. Lane.

Q. Where do you live?

A. Two miles south of Ballwin.

Q. That is about the western part of the county, beyond Manchester road?

A. Yes, sir.

Q. What is your business?

A. Farmer.

Q. How long have you lived there?

A. Twenty years.

Q. You come in contact with the people of Ballwin and Manchester pretty generally?

A. Yes, sir; generally.

Q. Since the latter part of last June have you heard any discussion among the people whom you met wherein they have expressed their opinion as to the guilt or innocence of Barrington, the defendant in this case?

A. Very little in the last few months.

Q. When, if at all, did you hear any discussions?

A. Well, along the fore part of the summer—in June and July.

Q. What was the substance of their statements?

A. Well, most of the people I come in contact with draw their conclusions from the newspaper reports—a great many of them.

Q. What seemed to be the opinion of any of them, if they expressed it? Did anybody express an opinion?

A. I don't recollect of any, to me.

Q. Did you ever hear anyone say that they believed the defendant guilty?

A. No, sir.

Q. Do you know whether they spoke with any knowledge of
468 the facts in the case, or was it based on what they read in the papers?

A. On what they read in the newspapers.

Q. Was defendant Barrington known in that community?

A. No, sir.

Q. Was James P. McCann known there?

A. No, sir.

Cross-examination by Mr. JONES:

Q. You have stated you never heard any expressions either way on the case as to his guilt or innocence?

A. I may have heard expressions. They often ask me for my private opinion.

Q. Do you always give it?

A. No, sir; I don't. I always reserve my opinion.

Q. You don't know what conclusions people have arrived at from reading newspapers?
A. No; I do not.

Mr. WILLIAM HACKMAN, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.
A. William Hackman.
Q. Where do you live, Mr. Hackman?
A. I live at Mehlville.
Q. On the Le May Ferry road?
A. Yes, sir.
Q. How long have you lived there?
A. Eighteen years.
Q. What is your business?
A. Farmer.
Q. Have you any connection with the roads there?
A. Yes, sir; I am road overseer.
Q. Since the latter part of June of last year, among the people you met and come in contact with, have you heard any discussions of the case of the State of Missouri against Frederick Seymour Barrington wherein the opinion has been expressed as to the belief in the guilt or innocence of the defendant?
A. I heard them speak about it, but I never heard them make any expressions about an opinion.
Q. How recently have you heard the case discussed?
469 A. Oh, I guess five or six times.
Q. How long ago?
A. Oh, about three or four months ago.
Q. Have you heard any discussion of the case recently?
A. No, sir; no.
Q. Was Barrington known in your neighborhood personally?
A. No, sir; not that I can hear.
Q. Was James P. McCann known in that neighborhood?
A. No; not that I know of.
Q. Do you know whether these people you heard discussing it—was it discussed from a knowledge of the facts in the case or from what they read in the papers?
A. From what they read in the papers.
Q. Those discussions of the case, some thought that he was guilty and some innocent?
A. I never heard them speak that far.
Q. What would they say?
A. Just speak about the case—what happened—they never said anything about who was guilty or who wasn't.
Q. Did you ever express any opinion about Barrington?
A. No, sir.

Q. Did you ever hear of him as connected with those other crimes which the newspapers charge him with?

A. No, sir.

Q. Did you ever hear anyone say that they thought he was innocent of this crime?

A. No, sir.

Q. You have never heard very much discussion about it at all?

A. Oh, I heard it five or six times, as I said before, but I never took particular notice of it.

Q. No expression of guilt or innocence?

A. No, sir.

Q. You didn't pay very close attention to the conversations?

A. No, sir.

Q. They may have discussed it one way or the other and you not have known it?

A. No, sir; I never took particular notice. It didn't bother me.

Q. That will do.

470 State rests.

Defendant resuming:

Mr. GROVER. I now offer the Post-Dispatch—regular edition—of July 2d—everything on the first page and as continued there.

(This offer is in words and figures as follows:)

EVIDENCE OF A PLOT.

Edward Spriggs, who was Barrington's barber for a month, testifies that Barrington asked where he could find a secluded spot near running water. He also inquired about routes to Canada, saying he was going there some time soon.

Miss Margaret Lannon, of Bonfils, testified that she saw Barrington inspecting the country a week previous to the committal of the crime.

Herman Lang, who lives south of the quarry, testifies that he saw Barrington walking about the quarry and along the road past it to the St. Charles rock road June 13.

Barrington's admission will be introduced to show that he was at Bonfils once before the night of the 18th, drawn there to see the effects of the high water.

A little boy will also testify that he met Barrington and told him that he could not walk further along the railway track towards St. Charles.

The fictitious note written by Barrington to himself to allay Mrs. McCann's suspicions as to her husband's whereabouts, with Barrington's confession that he wrote it himself, will be introduced.

The .38 caliber revolver found in Barrington's trunk at Union Station will also be produced. This is the caliber of cartridges found at the scene of the murder.

Mrs. Williams testifies that McCann told her on the car that they were going out into the country on business, and not on a lark. Mrs. McCann testified that Barrington had invited her and her
471 husband to go into the country that evening—the night of the murder—to see some supposed friends of Barrington, who have never come forward, and that at the last moment her husband told her Barrington had changed the invitation to exclude her.

THEORY OF THE PROSECUTION AND SUMMARY OF THE EVIDENCE.

The theory of the prosecution is that Barrington plotted to lure McCann to a secluded spot where he could murder him and hide the body, disposing of all means of identification; that he did murder McCann and that the motive was robbery; that he took what money and valuables McCann had on his person and that he hoped to fleece Mrs. McCann of the $5,000 or more which he knew McCann had deposited in a St. Louis bank, making it accessible to her.

THE MURDER AND IDENTIFICATION.

On the fact of the murder the prosecutor relies upon the evidence of Dr. Randle, of Clayton, who performed the autopsy on the body found in the Bonfils quarry, that there were two bullet wounds and several razor slashes, and these wounds were not self-inflicted.

Mrs. McCann; her sister, Mrs. Mayme Evans; J. W. Church; Thomas Leonard; Joseph McCann, a brother, of Oklahoma, and Mr. Hume, his brother-in-law, of Kentucky, identify the body.

Mrs. McCann declares it was her husband's body because of the general contour, particularly of the neck and shoulders. Mrs. Evans identifies the body by a gold-filled tooth.

Church and Leonard also recognized the tooth, and the latter testifies to two upper front teeth, far apart, one of which projected. Hume made the identification more complete by a mole on the breast.

Emil and Julius Krueger testify that they found McCann's shoes in the wheat field near the station, as well as one of his silk socks.

472 Officer Ball testified that he found a bloody cuff near the same place, which Mrs. McCann identified as her husband's.

Martha Lang, 11 years old, testifies that she found McCann's pocketbook, containing a card with the name Joseph Spiro, Minerva avenue, near where the body was discovered. A few feet away she and her three little brothers found the handle of a razor, five .38-caliber cartridges, four loaded and one empty.

Mrs. Charlotte Krueger, her son Julius, who live near the scene of the tragedy, and Thomas Coleman, a watchman on the Wabash Railway at Bonfils, will swear that they heard two pistol shots. Coleman will say that he heard imploring screams from the victim: "For God's sake, do not kill me." Mrs. Krueger will testify that she heard a similar remark.

EVIDENCE OF BARRINGTON'S GUILT.

As evidence against Barrington, his admission that he went with McCann to Bonfils is the strongest proof that he was at the scene of the crime when it was committed.

Should Barrington repudiate the admission made to the detectives, Conductor Ike Bennett and Motorman John Oellien, the crew of the car on the St. Louis, St. Charles and Western Railway, will testify that McCann and Barrington went to Bonfils on their car; that they saw them alight; that they heard two pistol shots and screams 15 minutes after the two left the car and walked in a southerly direction towards the quarry.

Mrs. Gertrude Williams, of 2335 Randolph street, testifies that she talked with McCann on the car, with reference to his conversion, while she was on her way to the Marvin camp ground, and she will produce a card with his name and address given her by McCann. She identified Barrington as the man with McCann.

Motormen Cunningham and Mott, of the St. Louis, St. Charles and Western Railway, testify that on the morning of the 19th they saw Barrington, dirty, bloody, and disheveled, skulking along the
473 track on his way to St. Louis. They declare that they passed Barrington five times between Battonville and Wellston between 5.47 and 7.30 the morning following the murder.

Detective Cabanne and Policeman Aylward testify to the finding of McCann's gold watch and diamond ring beneath the cushion of the patrol wagon in which Barrington was taken from the mounted district station to the Four Courts.

Charles Meyer testifies that Mott sent him for a policeman at Wellston to arrest Barrington because of his suspicious appearence, but none could be found at the time. Meyers also testifies that he saw Barrington board a downtown suburban car at Wellston about 8 o'clock.

STRONG POINT AGAINST BARRINGTON.

Second inquest develops that he asked about the fatal shots before they had been mentioned, indicating previous knowledge—Counsel for the prisoner questions the witnesses—Mrs. McCann, accompanied by her sister, arrives early—Scene of the proceedings changed at last moment to accommodate crowd.

The second McCann inquest was begun this morning at 10.45 in the circuit court room of St. Louis County at Clayton. It was the original intention to hold the inquest in the county court room, but the circuit court room was chosen instead, because it was cooler and large enough to hold the immense crowd, which the other room would not.

A strong point was developed against Barrington in the testimony when S. D. Monahan testified to hearing Barrington ask as to the number of bullets in the body, before the examiners had learned that

McCann had died from bullet wounds. This occurred at the grave side, while the examination to determine the nature of the wounds was in progress. The prosecution holds that the fact indicated a previous knowledge of the murder on the part of Barrington.

474 Promptly at 10 o'clock Mrs. McCann, her sister, Mrs. Mayme Evans, D. C. Hume, brother-in-law of McCann, and Joseph McCann, his brother, arrived.

Mrs. McCann was dressed in mourning. Her dress was of black, and she wore a bonnet and veil.

Mrs. Evans wore a dark skirt, a light shirt waist, and a black picture hat.

The women were given seats near the window on the south side in the coolest part of the room near the window. Joe McCann and Hume were seated just in front of them.

J. W. Church and Thomas Leonard, former boarder at the McCann home, came shortly after and were seated near the first party.

R. L. Yates, of 1803 Washington avenue, and Attorney H. E. Ossenbacher, were present. Sergeant-Major Yates is an English army officer, and says he would like to see Barrington get fair play.

Beno Altheimer, who stated he was associate counsel with Col. John I. Martin in the divorce case of "Lord" Barrington and Wilhelmina Grace Cochrane, to be tried in Kansas City July 9, was admitted inside the bar.

BARRINGTON IS ADMITTED.

The inquest did not begin at 10 o'clock, the appointed time, because of a lengthy discussion concerning Barrington's presence. Some of the authorities stated that he was privileged to appear at the preliminary hearing, but that he could not be present at the second inquest. The question was debated for thirty minutes.

The prisoner was eager to be present. At 10.45 it was agreed to admit him. Sheriff Hencken and Deputy Sheriff Bellairs escorted him inside the railing. He was seated near the table about ten feet from Mrs. McCann.

Coroner Otto Koch opened the inquest. Prosecuting Attorney Johnston, who has asked for the second inquest, sat near the

475 coroner. The same jurors that acted Saturday afternoon were sworn in. They are: Herman Lang, Alex. Tellitzach, John Napple, Rrank Grunwald, John Leighright, Frank Luecke. All of them are farmers who live near Bonfils. Leighright is a negro.

COUNSEL ALLOWED FOR BARRINGTON.

The first witness called was Louis Tucker, a farm hand. Before he could be questioned Beno Altheimer arose and asked permission to represent Barrington as counsel.

Altheimer declared that the prisoner had a right to a counsel at the inquest. It was argued that the first appearance of counsel must be at the preliminary hearing.

Altheimer declared that the prisoner's counsel was privileged to be present at the inquest and suggest questions.

Barrington, when addressed, said that he had been denied the right and privilege to secure a representative.

Prosecuting Attorney Johnston asked: "Have you sent out for any particular attorney?"

Barrington replied that he had not, but had been denied admission.

Altheimer stated: "I have made repeated efforts to visit the prisoner, but have been denied access to him by the county officials, who stated that I could not be admitted until after the inquest."

After some argument Mr. Altheimer was given a seat behind Barrington's chair. A woman stenographer was placed at the reporter's table to take the evidence.

Tucker then took the stand. His testimony was that on Thursday, June 25th, he returned to the neighborhood of Bonfils station to see if the flood water had receded so he could get back into his home.

As he passed the quarry pond he saw a body and went to the Krueger home and reported his find to Julius and Charles Krueger and asked them to go to the pond with him and remove
476 the body and notify the coroner. They did not believe him.

COULDN'T IDENTIFY M'CANN'S BODY.

He was unable to identify it from pictures of McCann, and said that he had not noticed any marks of violence.

When Tucker was asked as to the description of the body, Attorney Altheimer, who then took up the defense for Barrington, asked if the body of James P. McCann was in court and, on receiving a negative answer, asked that the fact be recorded in the minutes of the inquest.

When Tucker answered that he saw no marks of violence on the body, Barrington, who had been taking notes independent of his attorney, got very busy and asked for more paper.

Fritz Krueger, an aged man, who heard with difficulty, was the second witness. He is the father of Julius and Charles Krueger, and accompanied them to the pond on Friday.

His testimony was: The body was lying face up in the water and had the appearance of having been in the water a week or more. It was of a good-sized man and had a light mustache. He noticed one wound just below the eye but did not probe the wound. When the party reached the pond the body was lying near the bank, the feet touching the earth. His family had sent word to Coroner Koch when they found the body by asking a conductor on the St. Louis, St. Charles and Western Railroad to telephone him.

Mr. Krueger remembered after the body was found that his wife had told him the week before of hearing two shots in the neighborhood of the quarry pond and of hearing a man pleading with someone not to shoot. He had forgotten about the incident until the body with the wounds was found.

HE FOUND M'CANN'S SHOE.

Julius Krueger, a son of Fritz Krueger, was the next witness. As he went to the stand Attorney Altheimer asked Coroner Koch if the witnesses who signed the testimony were reading it
477 before affixing their signatures. He received an affirmative answer.

Julius Krueger testified that on the night of June 18, he heard two shots in the neighborhood of the quarry and had heard a human voice screaming as if for help. He could not distinguish words in the screams.

On the Monday after June 18 he had found one of the shoes in the wheat field where he was cutting wheat. It was half a mile from the quarry towards St. Louis from Bonfils station.

He identified the shoe—a clean, low-cut patent leather, with the string still tied in a bowknot.

A. C. Davis, who was sitting by Prosecuting Attorney Johnston, as the attorney for Mrs. McCann, suggested questions to Mr. Johnston, while Altheimer, as attorney for Barrington, kept up a running fire of questions, and it became necessary to appeal to him not to delay the proceedings with useless questions.

While Julius Krueger was on the stand he got mixed in his distances, which *ge* gave in steps, and was unable to reduce to feet and yards, and finally Herman Lang, another witness, got up in the court room and made several strides for the benefit of Julius and asked if "he could not tell the coroner how far it was from one foot to the other."

During the intermission caused by the laugh that followed Lang's efforts to help Julius along, the official stenographer looked at Barrington's notes and found that he was taking them in shorthand that was legible.

FOUND THE OTHER SHOE.

Emile Krueger, aged 14, followed his brother Julius. He had found the other shoe, which he identified in the court room.

It was also along by the track of the St. Louis, St. Charles and Western electric road, midway between the depot at Bonfils
478 station and the switch east, about 55 yards from the depot. He gave the shoe to Detective Cabanne Saturday.

Marthe Lang, aged 11, identified the black pocketbook she found in the field, containing the four loaded cartridges. She found them on Monday before the body was found. She had turned them over to Detective Cabanne.

BARRINGTON ASKED ABOUT THE SHOTS.

J. W. Church was called and said that he positively identified the body taken from the grave Sunday as that of McCann. He had known him well, and had at one time got him to stop drinking for two months.

Martha Lang was recalled and identified the razor handle. She found it ten feet from the quarry pond bank, where she found the pocketbook. She had also found one exploded shell and her brother told her of finding another one and throwing it away.

S. D. Monahan, of 3635 North Market street, a motorman for the transit company, had known McCann for six years. Their acquaintance was begun on the Chicago race tracks. He had not seen him for two months.

Sunday he examined the body taken from the grave and could not be mistaken in that it was McCann's. He examined the teeth especially.

While they were standing about there he heard Barrington ask whether there were two or three shot wounds in the body. At that time the examination had not revealed any bullet wounds. He also saw the gashes about the throat and face.

At the conclusion of Monahan's testimony the inquest was adjourned at 12.20 o'clock until 1 o'clock.

A NEW WITNESS FOR THE CAR RIDE ON FATAL NIGHT.

The statements of Mrs. Gertrude Williams, of 2335 Randolph street, who was a passenger on the St. Louis, St. Charles and Western car, on which Barrington and McCann rode to Bonfils station, adds an important link to the movements of the two men on the night of the murder.

479 Mrs. Williams, in company with J. F. Beeson, was assisting Mrs. M. Freer, an invalid, to the Marvin camp ground, and she occupied the car seat directly in front of the one in which McCann sat. She saw the two men when they boarded the car at Wellston, and noted their actions until she left the car at Marvin.

She had never seen either of the men before, but she remembered him distinctly, because on the way out to the camp grounds she engaged in a lengthy conversation with McCann, and before leaving the car she promised to pray for him, which, she says, she did.

In Chief Desmond's office Mrs. Williams picked out the pictures of McCann and Barrington from a group which were handed to her for inspection.

McCann did not appear to be under the influence of either drugs or liquor the night of the murder, Mrs. Williams stated.

Mrs. Williams stated that Barrington and McCann were joking and laughing on the platform at Wellston, where they waited several minutes for a car. Barrington was pointed out to her by a stranger, who said, "That is the bogus Lord Barrington, who is exhibiting himself at a downtown saloon for $50 a week."

During the course of their conversation on the car McCann told Mrs. Williams that he and Barrington were going to the county on business and "not on a lark."

The conversation between McCann and Mrs. Williams started, the latter said, by McCann remarking that he "pitied the poor old lady (Mrs. Williams' companion) in her crippled condition."

"You need not pity her, for she is a Christian," replied Mrs. Williams.

McCann then told Mrs. Williams that he was a sporting man, but that his grandfather had been a minister, and that he was of a good family.

480 Mrs. Williams had some religious tracts with her, and she gave one each to McCann and Barrington. The former read his carefully, but Barrington crumpled his in his hand and threw it away without even looking at it. The title of the tract was "A sinner's photograph."

Mrs. Williams is positive that neither McCann or Barrington showed any signs of having been in a struggle. Both were faultlessly attired, she said, and McCann appeared to be in an exceptionally good humor, while Barrington appeared nervous.

As Mrs. Williams was leaving the car at Marvin she said McCann bade her good-bye, with "God bless you; you are a good woman."

Mrs. Williams replied by saying that she would pray for McCann that night. She did so before retiring.

The evidence of Mrs. Williams corroborated the statements of the conductor and motorman, who have testified that Barrington and McCann were passengers on the car the night of the murder.

LETTERS INDICATE THAT MRS. M'CANN IS INNOCENT.

Letters written by Mrs. McCann to her husband during the time she was uncertain as to his whereabouts are in the possession of the St. Louis post-office, and are regarded by the police as additional evidence that Mrs. McCann was not implicated in the disappearance of her husband.

The letters were mailed June 22, four days after McCann disappeared, and were endorsed as being sent by Mrs. J. C. Leland, and as there is no such person the post-office authorities have declined to turn them over to Mrs. McCann.

Mrs. McCann says she wrote the letters at her matrimonial bureau office in the Temple Building and sent no money, but registered them so she would learn at once as to their delivery, and she would like the contents to be read as evidence at the inquest.

They were written to verify the suggestions of Barrington
481 that McCann was at Vandalia or Centralia, Ill., and she wrote in them how Barrington was acting.

STONER WAS NOT ARRESTED.

Warren W. Stoner, who was questioned by Chief of Detectives Desmond in connection with the McCann case, was not under arrest.

Stoner was escorted to the Four Courts by Detectives Greeley and Dwyer to give information as to the acquaintances and habits of McCann.

He told Chief Desmond that he had known McCann for some time, having associated with him on various race tracks of the country.

Stoner stated that he had last seen McCann alive during the World's Fair dedication week. He had seen Barrington only once, he said.

The statement that McCann paid Stoner's board at the St. James Hotel is denied by Mr. Stoner and by the hotel management.

The police report that Stoner pawned Mrs. McCann's ring for $200, with her consent, is erroneous. Mr. Stoner says he borrowed $200 from Mrs. McCann, giving her his wife's $350 diamond ring as security.

Mr. GROVER. I next offer the St. Louis Globe-Democrat, 1st and 2nd pages, July 2nd.

(This offer is in words and figures as follows:)

BARRINGTON IS HELD FOR M'CANN'S MURDER BY JURY.

Verdict, strong as it could be made, failed to excite prisoner, who said he expected it—One witness heard cries of "Don't kill me"—Bogus lord takes down the more important testimony in shorthand—Lawyer volunteers service—Widow of murdered man tells straight forward story—Only looks twice at prisoner—Witnesses' testimony makes strong chain of evidence.

482 *Coroner's verdict.*

We, the jury, find that James P. McCann came to his death by felonious wounds, the result of certain cuts and incisions in and upon his chin, cheek, and thumb; also by the infliction of certain gunshot wounds in his head, two bullets having been found—one at the angle of the jaw, the other within the substance of the brain—said cuts and incisions being caused by a razor or other sharp instrument held in the hands of Frederick Seymour Barrington. Said gunshot wounds were caused by leaden bullets fired from a revolving pistol held in the hands of said Frederick Seymour Barrington. All of said wounds being inflicted in and upon the person of said James P. McCann by the said Frederick Seymour Barrington, on the night of June 18, 1903, near Bonfils station, in the county of St. Louis and State of Missouri.

Verdict: Homicide.

FRANK LEUCK.
ALECK POLLITZACH.
DANIEL NAPPLE.
FRANK GURENEWALD.
DANIEL LEIGHRIGHT.
HERMAN LANG, *Foreman.*

Frederick Seymour Barrington, more commonly known as "Lord" Barrington, was held for the murder of James P. McCann by a coroner's jury at Clayton yesterday.

The verdict of the jury was as strong as it could be made. Barrington said, after it had been returned, that he had not expected anything else. He admitted that the circumstances precluded any other decision. He refused to testify, and nobody testified in his behalf.

PREDICTS SURPRISES.

"There will be some big surprises," he said, "before my trial is over. The British Empire will interest itself in my behalf and I will have plenty of good counsel. I am not a particle worried by the verdict. Three-fourths of the evidence taken by the coroner caused a useless waste of time. I had admitted nearly all of it."

The most important evidence of the day was given by Thomas Coleman, a flagman for the Wabash Railroad, and William Mott and Frank Parry, employees of the St. Louis, St. Charles and Western Street Railway Company.

Coleman's testimony was of a dramatic character. He said he heard a shot fired over in the direction of the stone quarry where McCann's body was found, about 11 o'clock the night of the murder.

CRIES FOR MERCY.

The shot was followed by the cry, "Don't kill me!" from the same direction.

Coleman declared that the man whose voice he heard was piteously begging to be saved. He heard a second shot, then crying and moaning for five minutes, followed by a terrible stillness.

Coleman felt that a crime had been perpetrated, but his duties prevented him from investigating it at the time.

Coleman's recital of what he had heard affected Mrs. McCann greatly. Friends removed her from the scene of the inquest.

Mott and Perry testified that they saw Barrington five different times as he was coming from the scene of the murder. Barrington does not deny that he was with McCann at the quarry on the night of the latter's disappearance, and at the exact time witnesses claim to have heard the shots fired.

John Oellien and Isaac Bennett were in charge of the car that McCann and Barrington rode on to Bonfils. They identified Barrington in the court room and McCann by the tintype picture he had taken with Barrington at Suburban Garden.

OTHER STRONG EVIDENCE.

There was other evidence that pointed directly to Barrington as the perpetrator of the crime. When it was all in the case seemed as strong against him as circumstances could make it.

When the time for the inquiry began yesterday morning the St. Louis County officials were in a big debate as to whether the prisoner, Barrington, should be allowed to be present. One of the officials

contended that he had no business at the hearing. Others feared that if he was not present the legality of the hearing might be questioned.

It was finally decided to allow Barrington to be present and he was led into the court room by deputy sheriffs Schnecko and Bellairs. The room was already packed. A few were there on business and others from mere curiosity. The prisoner was given a seat between the deputies. Detectives Kirk and Cabanne, of St. Louis, sat near the three. Barrington did not exhibit any nervousness. As he took his seat he looked about the room and smiled.

Mrs. McCann, wife of the murdered man, her sister, Mrs. Mamie Evans, Joseph McCann, brother of the deceased, and B. T. Hume, his brother-in-law, were in the room when Barrington entered. The party had seats near a window less than twenty feet away from the prisoner.

MRS. M'CANN FACED PRISONER.

When Barrington entered the room Mrs. McCann pushed her black veil away from her face and gave him a prolonged and scornful glance. She appeared to pay no more attention to until the afternoon, when she took the witness stand to tell what she knew. Then she was compelled to sit face to face with him.

Several times while Mrs. McCann and other witnesses were
485 telling their stories. each one tending to more deeply incriminate him, the bogus lord looked straight at them without a quiver and smiled in a cynical manner.

All testimony considered important for his defense was taken down in shorthand by Barrington. This proved another accomplishment on his part, and some doubted whether the little dots and dashes he made were genuine. An old shorthand man, however, declared that they were correct.

Coroner Otto W. Koch had called the first witness when Beno Altheimer, a young attorney from St. Louis, interrupted the proceedings by demanding the privilege of making a statement. He said he had been associated with Barrington's attorney, Col. John I. Martin, who had charge of the prisoner's civil court business. "I have been trying to see Barrington on business connected with that business," young Altheimer declared, "but the officials here have denied me that right.

THINKS BOGUS LORD INNOCENT.

"I desire to say to you that I believe Barrington innocent of the charge against him. He is presumed to be innocent until proved guilty. He is entitled to those safeguards guaranteed every man by the Constitution, and I am here now to offer him my services as an attorney."

Turning to Barrington, Altheimer asked Barrington if he desired his services. Evidently the prisoner was impressed with the manner of the young man.

At any rate, he arose from his chair and said he would accept the proffered services. He charged the officials with having deprived him of the right to secure legal talent. Lawyers who had called at the jail to see him, he said, had not been permitted to do so.

Prosecuting Attorney Roland Johnston did not greet young Altheimer with the brotherly feeling which occasionally exists between
atorneys on opposing sides of a case. In fact, the prosecutor
486 apparently felt that Barrington did not need a legal representative at the inquest. Mr. Altheimer paid no attention to his opinion or inclination in the matter.

Mr. Johnston ruled that the prisoner's attorney would have no right to interrogate the witnesses. A. C. Davis, attorney, who had been representing Mrs. McCann, agreed with the prosecutor. The case then proceeded.

FIRST WITNESS CALLED.

Lewis Tucker, colored, was the first witness of the inquest. He was the first to discover the dead body. At that time a part of the mustache was still there. He notified the Krueger family of his find, and later the authorities were informed.

Lawyer Altheimer interrupted by asking the coroner if the body of the deceased was in the court room. Attorney Davis told the coroner to ignore Altheimer, and the coroner followed his advice.

Fred Krueger, who lives but a few dozen yards from the scene of the crime, helped take the body from the quarry. He said his wife heard two shots in the direction of the quarry Thursday night, June 18, and also heard cries. She told him about it the following morning.

As each witness finished he was asked to sign his written testimony as taken down by the clerk, I. C. Streeter. Mr. Altheimer suggested that the witnesses should carefully read their purported statements before signing them.

HEARD THE SHOTS.

Julius Krueger testified that he heard the shots on the fatal night and the cries of a man's voice. He said the voices appeared to belong to one who was in great distress.

Mrs. McCann left the court room while young Krueger was testifying. The youth testified to finding the shoes, which were identified
as McCann's. They were of three-quarter cut, and were laced
487 and the laces tied together when found. Late in the inquest it was shown that McCann wore low-cut shoes so large that he was not compelled to lace or unlace them. The shoes were shown Krueger, and he identified them as the ones he found.

Emil Krueger identified the silk hose found by himself and turned over to the officials. Martha Lang identified by marks she had placed on them McCann's pocketbook and the razor handle and cartridges she found near the scene of the crime. There were blood stains on the razor handle.

IDENTIFIED BODY.

J. W. Church, manager of a stock brokerage concern, testified to having positively identified the body taken from the quarry as that of McCann. He identified it by the shape of the head, contour of the face, and the peculiar droop of the shoulders. Church said he had known McCann since April 26th, but had been intimate with him and had induced him to stop drinking.

IDENTIFIED HUSBAND'S PROPERTY.

Mrs. McCann identified her husband's cane, found in Barrington's trunk at Union Station; the sock found near the scene of the crime as his; also the pocketbook found near the edge of the quarry.

Capt. McNamee, of the mounted police district, whose men have done nearly all the work on the crime, testified to the second arrest of Barrington. The latter told him of the alleged row back of Suburban Park. At the Four Courts later, he said, Barrington admitted that his story was untrue.

Thomas Coleman's story was the most interesting of the day. Coleman was guarding the Wabash track near Bonfils the night of the murder. It was about 11 o'clock, he said, when he heard a pistol shot in the direction of the quarry.

COLEMAN'S STORY.

"Don't kill me!" Coleman declared he heard somebody
488 piteously begging. The voice was that of a man. In answer to the appeal there came a second shot. Coleman heard it distinctly. Then he heard another cry, followed by moaning. In a moment everything was quiet.

In response to a question, Coleman said there was no wind blowing. He believed Providence took a hand in the affair to reveal the crime.

Mrs. McCann was compelled to leave the court room during the recital of Coleman's story. There were a great many tear-filled eyes in the room before the story was ended.

McCann and Barrington rode to Bonfils on the car on which John Oellien was motorman. He gave a good description of McCann. The two got off at Bonfils, where the car stopped thirty-five minutes. He saw them walk towards the quarry, and thought it strange at that hour of the night. It was about 10.35 o'clock when he heard a shot from the direction of the quarry. It was followed by a cry of distress, and then another shot. Oellien said he remarked to the conductor that "there must be something doing over there near the quarry." He and his conductor left the car after hearing the second shot, but everything was quiet.

ALSO HEARD SHOTS.

Isaac Bennett, who was on the car with Oellien, told a similar story relative to the shots. He recognized Barrington in person and McCann by a tintype as the two men who left his car at Bonfils on the fatal night. On the way out Barrington remarked that they were going to Bonfils on business. The latter wore a black fedora hat and McCann a panama, he said.

Charles Sack, motorman, said he saw Barrington at the Seven Mile house at 8 a. m. the morning after the crime. He wore a straw hat and carried a cane. A handkerchief was tied around his neck. He looked as though he had been walking through the weeds.
480 When his car passed Barrington, he said, the latter tried to hide his face.

William Mott and Frank Perry passed Barrington five times the same morning, they testified. They were on their car. Mott said he suspected that the fellow had committed some crime, and he notified his superintendent at Wellston to have him arrested when he reached there. Both Mott and Perry positively identified Barrington as the man they saw.

DETECTIVE CABANNE TESTIFIES.

Detective Gratiot Cabanne told of the arrest of Barrington, the recovery of his trunk at Union Station, and how Barrington changed his first story when confronted with McCann's jewelry.

Miss Margaret Lannon, whose home is a few hundred feet north of the quarry, testified that she had seen Barrington out there before the crime was committed. He wore a silk hat and Prince Albert coat. She remarked at the time that he looked like a preacher.

Tom Leonard testified that he had positively identified McCann's body. He referred to the prisoner as "That man whom they call Barrington."

Doctor Randle related the results of the post-mortem examination.

At the conclusion of the evidence Barrington's attorney wanted to know by whose authority his client was forced to appear at the inquest. Prosecutor Johnston replied that he was there because of his request to be permitted to attend.

FOUND TOOTH ON SCENE OF M'CANN AUTOPSY.

Arthur W. Mangus, of 3137 Franklin avenue, found a tooth yesterday morning near the place where the coroner held the autopsy on the body of James P. McCann. He took the tooth to Chief of Detectives Desmond, thinking that it might be of value to the officers in verifying the identification of the body.

The tooth, which is an incisor, has a small gold filling on one side. It was on account of the filling that Mangus thought the tooth might be useful to the officers.

490 Mr. GROVER. I next offer a clipping from the St. Louis World of July 3rd on the first page.

(This offer is in words and figures as follows:)

BARRINGTON BROKE DOWN AND WEPT LIKE A CHILD AFTER CORONER'S VERDICT.

Said there was no reason why he should kill the best friend he ever had—Verdict charged him with homicide—Evidence against him was very strong and decidedly convincing.

The coroner's jury in the second inquiry into the cause of James McCann's death returned its verdict at 5.15 Thursday afternoon.

The verdict was that deceased came to his death as a result of knife wounds on the face, neck, and hand, and gunshot wounds on the head and face, and that said wounds were inflicted by Frederick Seymour Barrington, and recommends that the Lord Barrington be held for homicide.

Barrington heard the verdict read without betraying the least emotion.

He was taken back to his cell in the Clayton jail where he will be held until the preliminary hearing on July 30.

When he reached his cell, Barrington betrayed more emotion than he has shown at any time since his arrest.

The tears welled to his eyes; but they were tears not of sorrow for his victim, but regret for his own predicament.

"I expect I will be held here now for several months, and all because the police and newspapers have given me a bad name," said Barrington, with a dismal whimper in his voice.

Then passion gained the mastery, and he cursed and fumed. "It's a bloody outrage, a bloody outrage, to treat an innocent man this way," he shouted.

"They say I killed McCann, the damned fools. Why should I kill him?

"According to their own accounts McCann was feeding me,
491 and feeding me well.

"He was supplying me with all the money I needed.

"He was going to start me in business as manager of a big World's Fair hotel.

"Why, then, should I kill him?

"Would you," turning to a World reporter, "Would you kill the man who was feeding you and clothing you and giving you all the money you wanted unless you did it in the heat of passion?"

The World representative acknowledged that he wouldn't.

"Why, then, should I kill McCann?" continued Barrington. "He was the best friend I ever had. We had no quarrel. We were the best of chums. I had all to lose and nothing to gain by his death. Why, then, I say, should I kill him?"

Barrington was silent for a few minutes.

His face twitched with nervous excitement.

"Damn them! Damn them! Damn them all!" he shouted, shaking his clenched fist at his imaginary enemies.

Then, throwing himself on his prison bed, he wept like a child.

THE INQUEST STARTS.

The inquest commenced in the large circuit court room at Clayton at 10:45 Thursday morning.

A dense crowd was present.

Promptly at 10 o'clock Mrs. McCann; her sister, Mrs. Mayme Evans; T. W. Hume, brother-in-law of McCann, and Joseph McCann, his brother, arrived.

Mrs. McCann was dressed in mourning. Her dress was of black, and she wore a bonnet and veil.

Mrs. Exans wore a dark skirt, a light shirt waist, and a black hat.

The women were given seats near the window on the south
492 side, in the coolest part of the room, near the windows. Joe McCann and Hume were seated just in front of them.

J. W. Church and Thomas Leonard, former boarder at the McCann home, came shortly after and were seated near the first party.

R. L. Yates, of 1803 Washington avenue, and Attorney H. E. Ossenbacher were present. Sergeant-Major Yates is an English army officer and says he would like to see Barrington get fair play.

Beno Altheimer, who stated he was associate counsel with Col. John I. Martin in the divorce case of "Lord" Barrington and Wilhelmina Grace Cochrane, to be tried in Kansas City July 9, was admitted inside the bar.

BARRINGTON ENTERS.

The inquest did not begin at 10 o'clock, the appointed hour, because of a lengthy discussion concerning Barrington's presence.

Some of the authorities stated that he was privileged to appear at the preliminary hearing, but that he could not be present at the second inquest. The question was debated for thirty minutes.

The prisoner was eager to be present. At 10.45 it was agreed to admit him. Sheriff Hencken and Deputy Sheriff Bellairs escorted him inside the railing. He was seated near the table, about 10 feet from Mrs. McCann.

Coroner Otto Koch opened the inquest. Prosecuting-Attorney Johnston, who had asked for the second inquest, sat near the coroner. The same jurors that acted Saturday afternoon were sworn in.

They were Herman Lang, Alex. Tellitzah, John Napple, Frank Guuenewald, John Leightrich, Frank Luecke.

All of them are farmers who live near Bonfils.

Leightrich is a negro.

493 COUNSEL PERMITTED.

The first witness called was Louis Tucker, a farm hand.

Before he could be questioned, Beno Altheimer arose and asked permission to represent Barrington as counsel.

Altheimer's claim that the prisoner had a right to counsel at the inquest was discussed.

It was argued that the first appearence of counsel must be at the preliminary hearing.

Altheimer declared that the prisoner's counsel was privileged to be present at the inquest and suggest questions.

Barrington, when addressed, said that he had been denied the privilege to secure a representative.

Prosecuting Attorney Johnston asked: "Have you sent out for any particular attorney?"

Barrington replied that he had not, but had been denied admission.

Altheimer stated: "I have made repeated efforts to visit the prisoner, but have been denied access to him by the county officials, who stated that I could not be admitted until after the inquest."

After some argument, Mr. Altheimer was given a seat behind Barrington's chair. A woman stenographer was placed at the reporter's table to take the evidence.

THE FIRST WITNESS.

Tucker then took the stand. His testimony was that on Tuesday, June 25, he returned to the neighborhood of Bonfils station to see if the flood water had receded so that he could get back into his home.

As he passed the quarry pond he saw a body and went to the Krueger home and reported his find to Julius and Charles Krueger, and asked them to go to the pond with him and remove the body and notify the coroner. They did not believe him.

He was unable to identify it from from pictures of McCann, and said that he had not noticed any marks of violence.

494 When Tucker was asked as to the description of the body Attorney Altheimer, who then took up the defence for Barrington, asked if the body of James P. McCann was in court, and on receiving a negative answer asked that the fact be recorded in the minutes of the inquest.

When Tucker answered that he saw no marks of violence on the body, Barrington, who had been taking notes independent of his attorney, got very busy and asked for more paper.

Fritz Krueger, an aged man, who heard with difficulty, was the second witness. He is the father of Julius and Charles Krueger and accompanied them to the pond on Friday.

FINDING OF THE BODY.

His testimony was: The body was lying face up in the water and had the appearance of having been in the water a week or more.

It was of a good-sized man and had a light mustache. He noticed one wound just below the eye, but did not probe the wound. When the party reached the pond the body was lying near the bank, the feet touching the earth. His family had sent word to Coroner Koch when they found the body by asking a conductor on the St. Louis, St. Charles and Western Railroad to telephone him.

Mr. Krueger remembered after the body was found that his wife had told him a week before of hearing two shots in the neighborhood of the quarry pond and of hearing a man pleading with some one not to shoot.

He had forgotten about the incident until the body with the wounds was found.

SHOTS HEARD.

Julius Krueger, a son of Fritz Krueger, was the next witness. As he went to the stand Attorney Altheimer asked Coroner Koch if the witnesses who signed the testimony were reading it before
495 affixing their signatures. He received an affirmative answer.

Julius Krueger testified that on the night of June 18 he heard two shots in the neighborhood of the quarry and had heard a human voice screaming as if for help. He could not distinguish words in the screams.

On the Monday after June 18, he had found one of the shoes in the wheat field where he was cutting wheat. It was half a mile from the quarry towards St. Louis from Bonfils Station.

He identified the shoe, a clean, low-cut patent leather, with a string tied in a bowknot.

OTHER WITNESSES.

Emile Krueger, aged 14, followed his brother Julius. He had found the other shoe, which he identified in the court room.

It was along by the track of the St. Louis, St. Charles and Western Electric Road, midway between the depot at Bonfils and the switch east, about 55 yards from the depot.

He gave the shoe to Detective Cabanne Saturday.

Martha Lang, aged 11, identified the black pocketbook she found in the field, containing the four loaded cartridges. She found them on Monday before the body was found. She had turned them over to Detective Cabanne.

J. W. Church was called and said that he positively identified the body taken from the grave Sunday as that of McCann. He had known him well and had at one time got him to quit drinking for two months.

Martha Lang was recalled and identified the razor handle. She found it ten feet from the quarry pond bank, where she found the

pocketbook. She had also found one exploded shell and her brother told her of finding another one and throwing it away.

S. D. Monahan, of 3635 North Market street, a motorman for the Transit Company, had known McCann for six years.

496 Their acquaintance was begun in the Chicago race tracks. He had not seen him for two months.

Sunday he examined the body taken from the grave and could not be mistaken in that it was McCann's. He examined the teeth especially.

While they were standing about there, he heard Barrington ask whether there were two or three shot wounds in the body. At that time the examination had not revealed any bullet wounds. He also saw the gashes about the throat and face.

AFTERNOON SESSION.

Wm. J. Johnston, an employe of the Swope Shoe Co., the first witness of the afternoon, identified the shoes which were found near the scene of the murder as greatly resembling, in his mind, a pair which he sold McCann in the latter part of May.

Benj. T. Hume, a brother-in-law of McCann, testified that he positively indentified the body as that of McCann.

He identified the body by the same means which led to the identification by Mrs. McCann.

MRS. M'CANN TESTIFIES.

Mrs. McCann, widow of the murdered man, went on the witness stand at the afternoon session.

Her story was that which she has told to the press and which she told at the first inquest.

She testified that she had positively identified the body.

When asked her means of identification, she replied that the general shape of the figure, the slope of the shoulders, the prominent upper teeth, and certain marks on the body convinced her that the dead man was her husband.

Following Mrs. McCann, Capt. McNamee, of the mounted district; Thomas Coleman, a watchman; John Oellien, a motorman; and Isaac Bennett, a conductor, gave formal testimony and the verdict was rendered as stated above.

Mr. GROVER. This is the witness that was to be here this
497 morning.

H. C. ST CLAIR, D. D., being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. You may state your name.

A. H. C. St. Clair—Herman C.

Q. What is your profession?
A. I am a clergyman.
Q. Of what church?
A. Of the Episcopal Church.
Q. Are you rector of the church?
A. I am the rector of Trinity Episcopal Church, corner of Channing and Franklin avenues.
Q. Do you know the defendant here?
A. I have seen him several times.
Q. When did you first see him?
A. I was first called to see him when he was very sick; just the exact date I can't tell.
Q. Where was it?
A. In the Clayton jail.
Q. You were called there professionally, were you?
A. Yes, sir.
Q. Now, did you visit the jail several times?
A. Several times since then.
Q. Now, state in your several visits to the jail, and coming in contact with the people here in Clayton, what took place and what was said, if anything, tending to show a prejudice for or against the defendant or feeling for or against the defendant.
Mr. JOHNSTON. We object to "prejudice."
Q. Well, feeling for or against the defendant—state what the facts were, if any.
A. The conclusion which I derived——
Mr. JOHNSTON. We object.
Q. State the facts—what happened when you came here, what you said and did, and what others said and did.
A. I came here the first time to see Mr. Barrington, and the second—the third time I came I was not received with the courtesy which I thought was due my calling.
498 Mr. JOHNSTON. We object and ask that that be stricken out.
COURT. State what was said and done?
Q. State how you were received and what was said and done which indicated this lack of courtesy?
A. The lack of desire on the part of the sheriff's office to let me see Mr. Barrington at all.
COURT. What do you propose to show?
Mr. GROVER. I think if there is prejudice on the part of the officers against the defendant it is competent to be shown here.
COURT. He can state the facts.
Q. State the facts.
A. The man who received me first was the jailer or the custodian of the jail and not the sheriff.
Q. Now, what happened?
A. I mistook the jailer for the sheriff of the county, not knowing the sheriff of the county; and I told the deputies of the sheriff that the prosecuting attorney and the sheriff both had told me I would

encounter no trouble in seeing Mr. Barrington, which proved partially untrue, because I have never yet seen the sheriff. I mistook the jailer for the sheriff.

Q. What difficulty, if any, did you have in getting to see the prisoner—what was said?

A. The difficulty I encountered was in seeing the prisoner privately—a private conversation with the prisoner.

Q. You wanted to see him privately in your professional capacity?

A. Privately; as a spiritual adviser.

Q. And from what you saw of the prisoner and your talk with him, state whether or not he was a member of the Episcopal Church?

Mr. JOHNSTON. We object. That don't make any difference.

COURT. You may state.

Q. Was he familiar with the ritual or practices of the church and so on?

A. I can't answer that question.

499 Q. When you saw him you went to see him as a spiritual adviser?

A. Yes, sir.

Q. And you had seen him as such before?

A. Yes, sir.

Q. You requested to see him privately, you say?

A. I did.

Q. What took place?

A. The jailer refused to let me see him privately. He would allow me to go inside the corridor of the jail and talk to Mr. Barrington through the bars of the outside corridor of the jail, and finally it became so unpleasant that I consulted the judge of the court.

Q. Now, what was the character of language used by the jailer at the time you wanted to see the prisoner on those occasions—what was said?

Mr. JOHNSTON. We object to that as irrelevant and immaterial.

COURT. Objection overruled.

Q. What was the character of language used there when you went to see this man?

A. If I might be allowed to continue my statements, I saw the judge of this court, who called up the legal adviser and the sheriff. They concluded that I had a perfect right to see Mr. Barrington privately, and the sheriff did not see that it was necessary for me to go inside of the jail and see him privately. I told them I didn't care where I saw him as long as I could have a room to myself to talk to him. The result was that they brought Mr. Barrington out in the corridor which connects the jail with the court house, and I couldn't see him privately even after what the judge and sheriff and his legal adviser had agreed upon. The jailer insisted on being present and doing most of the talking, and was very abusive; said he hadn't any use for churches or preachers or priests, or anything of that kind.

Q. Did he use any profane or abusive language while this was going on?

A. His language was rather rough.

Q. Do you remember any profanity or obscenity?

A. I couldn't distinguish any with the exception of a few
500 words which are so common that they are considered more rough than profane.

Q. Was the word "dam" used?

A. Yes, sir.

Mr. JOHNSTON. We object.

Q. State what the words were that were used?

A. I think the word "dam" was used and the word "hell." Those were the words which I say were more inclined to be rough than profane.

Q. There was a general aversion to allowing you to see him privately?

A. I objected to the attitude of the jailer in the matter, and learned that the jailer was being what you might call "egged on."

Mr. JOHNSTON. We object.

COURT. Objection sustained.

Q. Was anybody doing the egging on?

A. The jailer would leave the room when I became rather excited, but immediately returned, and I believe that he was sent back.

Mr. JOHNSTON. We object.

COURT. Strike that out.

Q. You found a great deal of difficulty in performing your clerical services?

Mr. JOHNSTON. We object and ask that that be stricken out.

COURT. Objection sustained. Strike that out.

A. My difficulty was in having conversation with Mr. Barrington privately. I have not, I might say, been here since that last experience I had.

Q. There were many obstacles thrown in your way?

A. I objected to the surly way in which I was received.

Mr. JOHNSTON. We object and ask that that be stricken out.

COURT. Strike that out.

Q. You objected to what?

A. I objected to the surly manner in which I was treated by the people connected with the jail and to the surly manner in which the prisoner was treated.

Mr. JOHNSTON. We object and ask that that be stricken out.

Q. (COURT.) Describe how he was treated. State the facts
501 and let the court draw the conclusion.

A. I will simply state that I was received in a surly manner by those in authority in the jail.

Q. Were you handed and ordered about?

A. No, sir.

Q. The prisoner was sick, too, wasn't he?

A. The first time I visited him I thought he was very sick.

Q. And the other times he wasn't a well man—didn't seem to be?

A. Not at that time.

Cross-examination by Mr. JOHNSTON:

Q. You are not a doctor of physics, are you?

A. No, sir.

Q. You don't know whether he was sick or assuming sickness, do you?

A. I have good reason to believe he was sick.

Q. That is your opinion, but you don't know one way or the other?

A. As far as I can tell anybody is sick I think he was—the opinion of a layman.

Q. Were you permitted to go into the defendant's cell personally?

A. Twice. The first time I was here he was evidently not able to get out of his bed, and I was brought into his bed by the jailer himself.

Q. The time you visited him first, the deputy sheriff took you there?

A. I think it was the jailer himself.

Q. And there was nobody there but Mr. Altheimer, yourself, and Barrington?

A. I don't think anyone was present.

Q. The first time you saw him you saw him alone in his cell?

A. Yes, sir.

Q. You were told that that was a privilege granted to no one?

A. No, sir; and I came the next morning after I saw him the first time, and I came up and gave him the holy communion the next day, early in the morning. The jailer received me and took me in there.

Q. And when was it that you say that you were treated so surly?

A. I think it was the third time I came.

502 Q. You had been coming pretty regularly?

A. Twice.

Q. The jailer told you that they had certain rules and regulations as to visiting the jail?

A. Not the first two times I came.

Q. Didn't you apply to me on your first visit? Didn't you apply to me and I told you that there was some rule and regulation as to the time of visits?

A. Possibly you did.

Q. Then, it is a fact that you were permitted on two separate occasions to go into the cell alone with the defendant?

A. On two separate occasions.

Q. And you were left in there with him alone?

A. I was outside in the corridor.

Q. Now, this language you speak of, was that used towards you?

A. Not applied to me. No, sir.

Q. Who was it applied to?

A. This was the opinion of the jailer in regard to churches and clergymen in general.

Q. They were not applied to the defendant?

A. No, sir.

Q. Aplied to no one in particular at all?

A. I might say that the jailer was feeling very much wrought up about certain treatment which he had received and he was complaining to me about it.

Q. But those remarks, you say, were not directed at anyone particularly?

A. They were not applied to me.

Q. Wasn't he complaining of some other stranger having violated some rules and regulations?

A. He said something about that, but I don't know.

Q. Isn't it a fact you received proper and courteous treatment here so far as you individually were concerned?

A. I can't say that I did.

Q. In what particular way were you not so treated?

A. It was the difficulty I had in seeing Mr. Barrington privately.

Q. Did you ever have to go away without seeing him?

A. I never did.

Q. You got to see him every day?

A. Yes, sir.

503 Q. Do you think it was then a prejudice existing against you, yourself, that you found out here?

A. No, sir; I think not.

Mr. GROVER. We object to "prejudice."

Q. That is all.

Redirect examination by Mr. JOHNSTON:

Q. Now, the fact is, that although you got to see him at every time, you didn't get to see him privately at every time—not every time you desired to see him privately?

A. No; I did not.

Q. And the last time you came there your conversation was broken up so you had to leave before it was finished?

A. Yes, sir.

Recross-examination by Mr. JOHNSTON:

Q. How many times did you get to see him?

A. Each time I came.

Q. How many times did you come?

A. Five or six times.

Q. And you got into his cell twice alone and saw him once in the corridor?

A. Well, it don't think it was absolutely alone I saw him in the corridor. The jailer walked up and down the corridor and talked to me all the time.

Q. He didn't overhear what you were saying, did he?

A. He possibly did not.

Q. That will do.

Redirect examination by Mr. GROVER:

Q. Why did you quit going there, Reverend St. Clair?

Mr. JOHNSTON. We object to that.

COURT. Objection sustained.

Mr. GROVER. We except.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

504 Mr. ALTHEIMER, being duly sworn on the part of the defendant, testified further as follows:

Direct examination by Mr. GROVER:

Q. Mr. Altheimer, in getting to see this prisoner in jail, did you ever come in contact with any difficulty?

A. Extreme difficulty.

Q. State what they were.

A. Insults.

Mr. JOHNSTON. We object.

Q. (COURT.) State the facts.

A. Well, for instance—the insults were too numerous to count.

Q. (COURT.) Mention a few of them.

A. For instance, I would have to wait around, and after I would get in there I would be interrupted frequently in conversation with the prisoner—be insulted when I came in and going out.

Mr. JOHNSTON. We object to that.

A. Well, language would be used to me that I don't believe would bear inspection of the parlor.

Mr. JOHNSTON. We object to that.

COURT. I can not leave it to you to determine that.

A. Well, such language as "Damn it to hell," and "You have been a hell of a long time in here," and "You must think I have nothing else to do," and "Damn this trouble," and all of that.

Q. Who said that?

A. The jailer.

Q. Now, do you know anything about going in there one day and seeing how the prisoner was fed?

Mr. JOHNSTON. We object to that.

Mr. GROVER. Well, I want to show that the treatment that the man receives in jail is a reflection of the sentiment of the community.

COURT. Do you mean to show that he was treated differently from any of the other prisoners?

Mr. GROVER. I never saw as to any of the others, and I
505 know that this man received stuff in there that wasn't fit for a dog to eat, and I saw it and Mr. Altheimer saw it, and I want to say it was while this man was sick and locked up in jail, and that he was fed on chunks of fat that big (illustrating) without a piece of lean in it and a loaf of bread that looked like it had been taken back to the bakery and steamed to make it soft, and I say that treatment is a reflection of the sentiment of this county, and if other

prisoners are treated the same way they are entitled to change of venue. I want to show the character of food that man got when he was a sick man there and ought to have been on hospital food. If I was put upon it myself I couldn't live on it one week—such stuff as I saw in that jail—couldn't do it.

COURT. The question is whether it tends to show the court whether or not there is prejudice against the defendant in the community.

Mr. JOHNSTON. We object.

COURT. Objection overruled.

Q. State what kind of food you found there at the time Barrington was sick there, Mr. Altheimer.

A. The stuff I found was about as follows: I first saw the stuff was in a large pan—long pan—and there was bread which had the appearance of bread that had been stale and had been baked over. In fact, anyone could tell that from casual observation. More particularly did I notice something called meat. It wasn't really meat, because there was no meat on it. It was a large hunk of fat with grease dripping down it.

Q. Was there any lean on it at all?

COURT. Was it beef, or what?

A. It was fat, I should judge, from a piece of roast, probably.

Q. Roast beef?

A. Roast beef.

Q. Fat of beef?

A. Fat of beef.

Q. Was it dripping in grease and oil?

A. Yes, sir; it was dirty loking. Unquestionably the
506 whole appearance had a poor appearance. Of course, we couldn't expect hotel food in there.

Q. What meal was that?

A. Noon; and Mr. Barrington complained to the counsel and to Jake, the jailer, that he couldn't eat it and threw the stuff on the floor and said that wasn't fit for a dog.

Q. State what was his condition at the time?

A. He was sick—no question of that—the man was sick for some little time.

Cross-examination by Mr. JOHNSTON:

Q. Do you know it to be a fact that the jailer, at your solicitation, bought extras for that man?

A. Yes, sir. I would like to say that the counsel has spent no less than fifteen or twenty dollars out of his own pocket, and for which he owes to-day several dollars, for the sustenance of this prisoner when he required it.

Q. Don't you know it to be a fact that the jailer himself spent ten or twelve dollars out of his own pocket?

A. No; I borrowed it and intend to pay it.

Q. He loaned money to buy food for the prisoner?

A. He loaned money for the prisoner.

Q. Did you know that a number of the deputy sheriffs contributed money from time to time to buy meals?

A. No; I did not.

Q. You know he received extra treatment there?

A. Extra treatment may be extra bad or good.

Q. I mean extra good treatment?

A. Extra bad.

Q. Did he receive worse than the other prisoners?

A. I should judge so.

Q. What means have you for knowing that?

A. By my connection with the prisoner and my contact with him.

Q. You saw how the other prisoners were treated?

A. Yes, sir.

Q. Did you notice any of them having any extra things to eat brought them outside their usual fare?

A. I didn't take notice of that.

Q. Did you see that Barrington did?

A. Not that I noticed.

507 Q. He had the county physician there?

A. I presume he did. It was his duty.

Q. You complain of the manner in which you were treated?

A. Yes, sir.

Q. Isn't it a fact that you spent the greater part of the last six months in the corridor of the jail there speaking to the prisoner?

A. It is true that I spent a great deal of my time there. The case necessitated that.

Q. Isn't it a fact you spent more time in that jail talking to your client than all the balance of the attorneys at this bar?

A. The prosecuting attorney is the best judge of that.

Q. (COURT.) Do you know?

A. I couldn't answer the question.

Q. How many times a week did you average there?

A. Sometimes three and four and sometimes a week and sometimes three or four weeks I wouldn't be here.

Q. How long would you remain with your client?

A. Sometimes ten minutes and sometimes two hours.

Q. And the greater part of that time you would be left alone?

A. That is true, yes. Sometimes I was and sometimes I wasn't. I would demand to be. I would have my rights.

Q. Then you are not complaining of the fact that some one was present?

A. Not at all. I am complaining of meanly acts. I would like to call to your mind one or two instances. One time there was an attempt to inspect mail between counsel and prisoner and data which the counsel had from the prisoner, and no counsel would stand for such a thing. I certainly wouldn't.

Q. You refer to the fact of his getting mail out of the jail?
A. Yes, sir.
Q. And you were aware of the rules of the jail that nothing was taken in or out of there without inspection?
A. Yes, sir.
Q. And knowing that to be the rule you would insist on bringing letters and messages out of the jail?
508 A. I certainly would, pertaining to this case.
Q. And you are complaining bitterly of the treatment you received?
A. Yes, sir.
Q. Although you were permitted to see him as often as you say you were and as long?
A. That is true. It isn't the time you see a prisoner or how long; it is the manner in which you see the prisoner that affects the situation.
Q. You say you remained as long as two hours at a time?
A. Sometimes.
Q. And you are complaining of that treatment.
I believe that is all.

Defendant's case.

And that was all the evidence offered on the motion for change of venue.

Whereupon, on hearing argument from both sides of the cause on the question of change of venue, the court took the matter under advisement until the 25th day of January, 1904.

* * * * * * *

509 *Term bill of exceptions.*

In the Circuit Court of St. Louis County, in the State of Missouri.
September term, 1903.

STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT. } Charged with murder.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered, that in the cause of the State of Missouri, plaintiff, vs. Frederick Seymour Barrington, defendant, wherein defendant is charged with murder, that in the Circuit Court of St. Louis County, in the State of Missouri, and before the honorable John W. McElhinney, the regular judge of said court, the following proceedings were held, to wit:

On October 6th, 1903, upon the formal arraignment of defendant the defendant filed his motion to quash the indictment in said cause, which motion to quash was in words and figures as follows, to wit:

In the Circuit Court of the county of St. Louis, in the State of Missouri. September term, 1903.

THE STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT. } No. 9215.

Motion to quash the indictment.

Comes now defendant, Frederick Seymour Barrington, in his own proper person and also by his attorneys, and moves the court to
510 quash the indictment against him in the above-entitled cause, and all and each of the counts thereof, for the following reasons:

I.

Defendant moves that the fifth count of said indictment be quashed, because—

1st. It does not charge or set forth sufficient facts to constitute a criminal offense.

2nd. It does not state sufficient facts to charge defendant with murder in the perpetration of robbery.

3d. It is vague, indefinite, uncertain, and inspecific.

4th. It is also vague, indefinite, uncertain, and inspecific as to whether it is intended to charge murder in the first or the second degree, or murder with or without weapons, devices, or instruments; and is so vague, indefinite, uncertain, and argumentative, and it is so intermingled with conclusions of law and evidential matter and surplusage as not to sufficiently or specifically inform defendant of the nature and cause of the accusation against him or as to inform him whether or not said count is intended to charge him with murder in the perpetration of robbery.

5th. It is inconsistent with and repugnant to counts one, two, and three of said indictment, in that it attempts to charge a homicide to have been committed by some manner, means, devices, instruments, and weapons unknown to the grand jurors, whereas said counts one, two, and three allege that the manner, means, devices, and instruments of such homicide were known to the grand jurors.

6th. It does not specifically, definitely, or with certainty charge that defendant killed or murdered the alleged deceased, nor inform defendant of what *act* he is charged to have done from which the alleged deceased died.

7th. Said count omits to state that any offense was committed contrary to the statutes in such cases provided.

511 8th. It is argumentative, indefinite, uncertain, and inspecific, in that it attempts to charge deliberation and premeditation by conclusions of law and insfficient matters of evidence.

Defendant moves that the fourth count of said indictment be quashed, because—

1st. It does not charge or set forth sufficient facts to constitute a criminal offense.

2d. It does not specificically, definitely, or with certainty charge that defendant killed or murdered the alleged deceased, nor inform defendant of what act he is charged to have done from which the alleged deceased died.

3d. It is inconsistent with and repugnant to counts One, Two, and Three, in that it attempts to charge a homicide to have been committed by a "way and manner and by some means, instruments, and weapons" unknown to the grand jurors, whereas said counts One, Two, and Three allege that the way, manner, means, instruments, and weapons employed in the pretended homicide were known to the grand jurors.

4th. It is also vague, indefinite, uncertain, and inspecific as to whether it is intended to charge murder with or without instruments and weapons, and fails to inform the defendant of the nature and cause of the accusation against him.

5th. It is vague, indefinite, uncertain, and inspecific, in that it charges that James P. McCann, by unknown means and weapons, "deprive" James P. McCann of life, and is also so lacking in words governing the word "deprive" as to strip the allegation of grammatical or substantial meaning; and also for said reasons it fails to charge a criminal offense.

III.

Defendant moves that the third count of the indictment be
512 quashed, because—

1st. It does not charge or set forth sufficient facts to constitute a criminal offense.

2d. It is inconsistent with and repugnant to counts One, Two, Four, and Five, in that it attempts to charge a homicide to have been committed by means of wounds from deadly weapons and suffocation with water, whereas said counts Four and Five attempt to charge a homicide to have been committed by means and weapons unknown to the grand jurors, and whereas count One attempts to charge a homicide by shooting with a pistol only, and whereas count Two attempts to charge a homicide by drowning.

3d. It is vague, indefinite, and uncertain throughout.

4th. It is vague, indefinite, uncertain, and inspecific as to what caused or was the proximate cause of the alleged death of the alleged deceased, and it attempts to charge a death by two immediate and proximate causes.

5th. It is vague, indefinite, uncertain, argumentative, and inspecific, in that it charges that "immediately after inflicting said gunshot wounds" that defendant threw the alleged deceased into a pond, whereas no "gunshot" wounds, or use of a "gun" or "guns," are otherwise alleged or referred to in said indictment.

6th. It is vague, indefinite, and meaningless in its attempt to state that something was "shot off and discharged."

7th. It is vague, indefinite, uncertain, inspecific, and argumentative, so far as it attempts to charge the giving of mortal wounds.

IV.

Defendant moves that the second count of said indictment be quashed, because—

1st. It does not charge or set forth sufficient facts to constitute a criminal offense.

513 2d. It is inconsistent with and repugnant to counts one, three, four, and five, in that it attempts to charge a homicide by means of drowning, whereas counts four and five attempt to charge a homicide in a manner and by means unknown to the grand jurors, and whereas count one attempts to charge a homicide by shooting, and count three attempts to charge a homicide by shooting and drowning.

3d. It is vague, indefinite, and uncertain.

V.

Defendant moves that the first count of the indictment be quashed, because—

1st. It does not charge or set forth sufficient facts to constitute a criminal offense.

2d. It is vague, indefinite, and uncertain.

3d. It does not set forth sufficient facts to charge an assault.

4th. It is inconsistent with and repugnant to all of the other counts in said indictment.

VI.

Defendant further moves to quash the entire indictment, and each and all of the counts thereof, for the following reasons, to wit:

1st. Because none of said counts, nor do all of them together, charge or set forth sufficient facts to constitute a criminal offense.

2d. Because each of said counts is inconsistent with and repugnant to all of the other counts.

3d. Because there is an improper joinder of counts and pretended offenses in said indictment.

4th. Because all of said counts are vague, indefinite, uncertain, and inspecific.

5th. Because none of said counts shows the kind or nature of assault that is attempted therein to be alleged.

514 6th. Because of the inconsistency, multiplicity, and repugnancy of said counts, the defendant is being proceeded against in violation of the State and Federal guarantee of due process of law and in violation of his constitutional right to be specifically informed of the nature and cause of the accusation against him.

7th. Because the names of witnesses on the part of the State are not endorsed on said indictment; and in support of this ground to quash, defendant states:

That the prosecuting attorney, at the time of the return of said indictment into court, and prior thereto, had knowledge of certain witnesses on the part of the State in this cause, and that said prosecuting attorney intentionally refrained from endorsing the name of one or more of said witnesses on said indictment, for the purpose and to the end that said witness or witnesses should be sprung as a surprise upon defendant in the trial of said case, and so that defendant could not make adequate preparation to meet the evidence and testimony of said witness or witnesses. That the names and places of residence, identity, and whereabouts of said witness or witnesses are unknown to defendant, and that he is entitled, as a constitutional right, to know the name or names of said witness or witnesses, and to have his, her, and their names endorsed upon any indictment against him charging any crime concerning which they are to appear against him. That defendant is a native citizen and subject of the King of Great Britain and Emperor of India, and as such is entitled, under and by virtue of the treaties now existing between the Government of the United States and the Government of Great Britain, as well as under the laws and Constitution of the Federal Government, and also under the laws of nations, to a fair and impartial trial of said cause, to be fully informed of the nature and cause of the accusation against him, and to know who are the wit-

515 nesses against him in said cause, in order that he may have a fair trial thereof and secure justice therein; and under said treaties, laws and constitutional right, as well as under the laws of this State, defendant alleges this ground to quash said indictment.

Wherefore, defendant prays that the court hear evidence upon this ground to quash, and that he be allowed to prove, by evidence of witnesses and other evidence, the allegations herein contained.

FREDERICK SEYMOUR BARRINGTON,
Defendant.

BENO ALTHEIMER &
SHELLY GROVER,
Attorneys for Defendant.

Said motion is and was endorsed on the back thereof in words and figures as folows, to wit:

"Filed, October 6th, 1903, F. J. Hollocher, clerk."

That accompanying said motion to quash defendant filed an affidavit in support thereof, which, omitting the caption, was and is in words and figures as follows:

In the Circuit Court of the County of St. Louis, in the State of Missouri.

THE STATE OF MISSOURI,
vs.
FREDERICK SEYMOUR BARRINGTON, *Defendant.*

Affidavit.

Frederick Seymour Barrington, being duly sworn upon his oath, says that he was born in , of English parents, who were natives and citizens of the Kingdom of Great Britain. That he is and at all times has been a citizen and subject of the King of
516 Great Britain and Emperor of India, and that the place wherein he was born was and is a part of and belonged to the Government of Great Britain.

That on the 24 day of Sept., 1903, there appeared in the St. Louis Republic, a newspaper printed and published in St. Louis, Missouri, and circulating generally in St. Louis County and throughout the whole country, the following article, to wit:

WIFE IDENTIFIED WEARING APPAREL.

Mrs. Jessie McCann says clothing belonged to her husband—Testify before grand jury—Prosecution intimates that important witness has been discovered—Barrington not perturbed.

Mrs. Jessie McCann identified the clothing and other articles of wearing apparel found by an employe of the St. Louis, St. Charles and Western Railroad Company Tuesday evening as those of James P. McCann, her husband, who is alleged to have been killed on the evening of June 18 by Frederick Seymour Barrington.

The clothing was also identified by Ona Morrison, a negress servant of Mrs. McCann.

The women went to the mounted district police station and Mrs. McCann wept when she saw the clothing of her dead husband. She had offered $50 reward for the discovery of the clothes and announced her intention of paying the money to the man who found them.

The clothing was taken by Sergeant Kirk and Special Officer Cabanne to Clayton for inspection by the grand jury, which is in session and which has been hearing evidence on the Barrington case for the last two days. Mrs. McCann and the Morrison woman went to Clayton and both again identified what is said by the State to be the missing link in the chain of evidence against Barrington.
517 The latter was less concerned than anyone connected with the case about the finding of the clothes. He laughed when told about it. His attorney, Beno Altheimer, said he had expected some sort of dis-

covery to be made. Barrington congratulated Patrick Kirk, the special officer who was raised to a sergeancy on account of his efficient work in the Bonfils mystery, on his promotion and said he hoped his success would continue.

The grand jury finished taking evidence in Barrington's case yesterday, and a report is expected before the end of the week. It is said that new evidence of an important character, in addition to finding the clothes, has been found against Barrington, and that it will have a strong effect when introduced at the trial in the circuit court. Prosecuting Attorney Johnston is noncommittal on the subject, but it is intimated that the new witness is the most important yet found, and that his identity will be carefully concealed until the trial.

It is said that Barrington has intimated to some of the jail officials that he also has a surprise to spring at the proper time.

That affiant has good reason to believe and does believe that the statement in said article concerning the witness to be used against affiant, emanated from the prosecuting attorney, and that affiant has good reason to believe that the *and* identity of said witness and other witnesses, is being kept secret from him by the State and that affiant is unable to get affidavits of said facts, but believes he can by eye-witnesses prove said facts and all facts alleged in the 7th paragraph of his sixth count of his motion to quash filed in this case.

That concerning the filing of said motion and affidavit, the following proceedings were had and entered upon the record in words and figures as follows, to wit:

518 "Fourteenth day, Tuesday October 6th, 1903.

"STATE OF MISSOURI,
vs.
"FREDERICK SEYMOUR BARRINTON, DEFT.

"Comes now at this day the prosecuting attorney for and on behalf of the State, and said defendant, being in custody, is brought into court and appears in his own proper person, as well as by his counsel, Beno Altheimer and Shelley Grover, esqs.; and said defendant being now formally arraigned upon indictment herein against him, a certified copy of said indictment having been delivered to said defendant at least forty-eight hours before this, his arraignment thereon, he, the said defendant, without pleading to the charge therein contained, doth now filed his motion to quash said indictment, and also his affidavit in support of said motion. Whereupon said defendant is remanded to the custody of the county jailer to await the further action of the court."

On October 17th, 1903, the said motion to quash coming on for hearing before said court, the said motion and affidavit were read to said court, and the following proceedings were had, to wit:

Testimony given on motion to quash the indictment.

SATURDAY, *October 17th, 1903.*

R. L. JOHNSTON, esq., being called by the defendant, through his attorney, Beno Altheimer, and duly sworn, testified as follows:

Q. What is your name?

A. R. L. Johnston.

Q. You are the prosecuting attorney of St. Louis County?

A. Yes, sir.

Q. And State of Missouri?

A. Yes, sir.

519 Q. As such, of course you have had charge of the present case of the State of Missouri vs. Seymour F. Barrington?

A. I have.

Q. And as prosecuting attorney you appeared before the grand jury?

A. Yes, sir; it was my duty to attend the grand jury.

Q. I will ask you if you know, or did know, of any witnesses for the State in this case whose names are not endorsed on the back of the indictment returned into this court room before this court, in the case of the State of Missouri vs. Seymour F. Barrington?

A. I do not. There may have been one absent witness whose name appears there—a shoe salesman.

Q. I will ask you if any material witness in this case is known to you whose name has been omitted from the back of the indictment in this particular case?

A. I object to answering that.

COURT. The objection is well taken.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. I will ask you the names of the witnesses who are endorsed on the back of the indictment in the present case—if they are all of the witnesses for the State of which you knew at the time of the return of the indictment into the court? Are the names of all of the witnesses who appeared before the grand jury endorsed on the back of this indictment in the present case?

A. They are.

Q. All of the witnesses that appeared before the grand jury?

A. They are.

Q. You say they are?

A. As far as I know, and my recollection is that I was pres-

520 ent all the time.

Q. And those are all of the witnesses that you know of who were before the grand jury?

A. Repeat that.

Q. I am asking you if the witnesses that appeared before the grand jury were all of the witnesses that you knew of at the time that this indictment was returned into court?

A. To the best of my recollection they are. I subpœnaed every witness that I knew of, and I believe that they all appeared with the exception of two absent ones, and my impression is that their names appear on the back of the indictment.

Q. Do you know of any witness by the name of Asa Mitchell, who appeared before the grand jury?

A. I do not. I have heard that name mentioned but know nothing about the testimony he would have given.

Q. I hand you herewith an article appearing in the St. Louis Republic of September 24th, 1903, and ask you if you know anything in reference thereto [handing witness paper]?

A. No, sir.

Q. Did you inspire that article?

A. No; I don't believe I could inspire anything.

Q. Did you give out any information which appears in the article which you have just read?

A. I never gave out any such information, but tried to avoid any.

Q. Did you intimate in any way or manner to the reporter representing this paper that there was such evidence, or such a state of facts?

A. No; I could not have done it, because the article is not founded on facts, so far as I am concerned.

Mr. GROVER. Your honor, we would like to see the subpœnas. It is my opinion that the subpœnas for witnesses before the grand jury must be returned to the court. Certainly those subpœnas had
521 to be used in having witnesses appear before the grand jury. It may be possible that they are returned to the county court, if not to the circuit court; and we ask the court at this time to order the State to produce in the hearing of this motion to quash the subpœnas used in subpœnaing witnesses before the grand jury to testify in this case. We make that application to the court and ask that the court make that order. I make that formally, but do not want to stop the proceedings at all.

Mr. GARDNER. The State objects to it.

Mr. GROVER. Now, the defendant offers in evidence the subpœnas of witnesses for the preliminary examination of this case.

Mr. JOHNSTON. We object to them.

Mr. GROVER. The purpose of offering them is in support of the motion to quash. Here are a great number of witnesses subpœnaed in this case, and it may be that a number of these witnesses were found by the State to be immaterial, and they were therefore not used by

the grand jury. If it should turn out on the trial of this case that a witness is offered whose name was not endorsed on the indictment, the fact being that the witness was subpœnaed before the justice in the preliminary examination, would show that the State knew of such witness. We wish to know whether or not these witnesses are abandoned.

COURT. Objection overruled.

The subpœnas offered and received in evidence were in words and figures as follows, to wit:

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss.

The State of Missouri, to Annie Morrison, Martha Lang, Herman Lang, Mrs. Fred Kroeger, Julius Kroeger, Robt. Wiggins, 522 R. W. Gliens, Thomas Leonard, Marie Evans, Jessie McCann, Charles Sack, J. W. Church, F. D. Monahan, Otto W. Koch.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central in the county of St. Louis on the 20 day of July, 1903, at the hour of 9.30 o'clock in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington, defendant, in behalf of the State, and hereof fail not at your peril. And the person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 13 day of July, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss.

The State of Missouri, to H. T. Randall, J. Ollien, L. Hasserick, Isaac Bennett, William Mott, Frank Perry, Charles Meyer, Martin Coat, Charles Morrison, A. Gilbert, 3618 Dodier St., M. E. Baumewits, 3637 N. Market St., J. M. Meyer.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 20th day of July, 1903, at the hour of 9.30 o'clock in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a

cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington is defendant, in behalf of the State. And hereof
523 fail not at your peril. And the person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 13 day of July, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss.

The State of Missouri, to Frank Leuck, Alex Pollitzach, Daniel Nappole, Herman Lang, John W. Bellairs, John P. Ossenfort.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace, within and for the township of Central, in the County of St. Louis, on the 20 day of July, 1903, at the hour of 9.30 o'clock in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 13 day of July, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss.

The State of Missouri, to Rudolph M. Kennie, with Globe D. M. Brown, clerk at Ruby's, 6th & Washington ave., Joseph D.
524 Saltkald, 1310 B. North Grant ave., with Republic; William Spink, with World, 9th & Chestnut.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 30 day of July, 1903, at the hour of 9.30 o'clock in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this writ is commanded to have same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 13 day of July, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri to Thomas Coleman, Asa E. Mitchell, Joseph McCann, B. T. Hume, Louis Tucker, William P. Johnson, Margaret Lennon, Tom Leonard, Mrs. Gertrude Williams, 2333 Randolph street.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 8th day of July, 1903, at the hour of 9.30 o'clock in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri, in plaintiff, and Frederick Seymour Barrington defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

525 Given under my hand this 3 day of July, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri to Annie Morrison, Martha Lang, Herman Lang, Mrs. Fred Kroeger, Robert Wiggins, 6220 R. W. Gliens, Robert Ball, Patrick Kirk, Gratiot Cabanne, George McNamee, Annie Kroeger, Emil Kroeger (sick).

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 8 day of July, 1903, at the hour of 9.30 o'clock in the forenoon of that day, at my office, in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 3 day of July, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri, to Thomas Brown, Mamie Evans, Jessie McCann, J. W. Church, I. D. Monahan, Otto W. Koch, H. T. Randle, Charles Sack, J. Ollien, L. Hasserick, Isaac Bennett, William Mott, Frank Perry, Charles Meyer, Martin Coat, Charles Morrison.

526 You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 8th day of July, 1903, at the hour of 9.30 o'clock, in the forenoon of that day at my office, in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri, plaintiff, and Frederick Seymour Barrington, defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this write is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 3 day of July, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri, to Frank Lueck, Alick Pollitzach, Daniel Napple, Frank Gruenewalk, Daniel Leighright, Herman Lang, John W. Bellairs, John P. Ossenfort.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 10th day of August, 1903, at the hour of 9.30 o'clock, last hour in the forenoon of that day, at my office, in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this write is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 4 day of August, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

527 *Subpœna for witnesses.*—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri to Robert Ball, Patrick Kirk, Gratiot Cabanne, George T. McNamee, John Cardell, John Schmidt, George Greeley, John Finan, John James, Roscoe T. Shaw, stenographer, police department.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 20 day of July, 1903, at the hour of 9.30 o'clock in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this write is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 13 day of July, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri to Frank Leuck, Aleck Politzach, Daniel Napple, Frank Gruenewald, Daniel Leighright, Herman Lang.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 8 day of July, 1903,
528 at the hour of 9.30 o'clock in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington defendant, in behalf of the defendant. And hereof fail not at your peril. And the person or officer serving this write is commanded to have same at the time and place aforesaid, certifying thereof his return.

Given under my hand this 3 day of July, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri to W. E. Baumewits, 3637 North Market st.; A. Gilbert, 3618 Dodier.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 8 day of July, 1903, at the hour of 9.30 o'clock in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this write is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 6 day of July, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

529 The State of Missouri to Thomas Coleman, Asa E. Mitchell, Joseph McCann, B. T. Hume, Louis Tucker, William P. Johnson, Margaret Lennon, Annie Kroeger, Emil Kroeger, Dr. G. C. Eggers.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 10 day of August, 1903, at the hour of 9.30 o'clock, last hour in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington, defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this write is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 4 day of August, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

22605—07 M——25

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri to Ralph McKinnie, with Globe D.; Mr. Brown, clerk at Ruby's, 6th & Washington ave.; Joseph D. Saltkeld, 1310 B. N., Grand ave., with Republic; William Spink, with the World, 9th & Chestnut; Dr. G. C. Eggers.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 10 day of August, 1903, at the hour of 9.30 o'clock, last hour in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick
530 Seymour Barrington, defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this write is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 4 day of August, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri to Robert Ball, Patrick Kirk, Gratiot Cabanne, George T. McNamee, John Cordell, John Schmidt, George Greeley, John Finan, John James, T. Shaw, stenographer, police department.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 10 day of August, 1903, at the hour of 9.30 o'clock, last hour in the afternoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri, plaintiff, and Frederick Seymour Barrington is defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this write is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 4 day of August, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

531 The State of Missouri, to John Morris, 909 N. Cardinal ave.; Mrs. Gertrude Williams, 2335 Randolph st.; J. F. Bieson, 2335 Randolph st. or Marvin Camp Grounds; Oliver Goodman, 2214 Morgan st.; E. Powers, 512 Pine st.; Ferdinand Beal, 7½ N. Broadway.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 10 day of Aug., 1903, at the hour of 9.30 o'clock in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this write is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 4 day of August, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri, to John Morris, 909 N. Cardinal ave.; Mrs. Gertrude Williams, 2335 Randolph st.; J. F. Bieson, 2335 Randolph st. or Marvin Camp Grounds; Oliver Goodman, 2214 Morgan st., rear or 5 N. Chestnut st.; E. Powers, 512 Pine st.; Ferdinand Beal, 7½ N. Broadway.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 20 day of July, 1903, at the hour of 9.30 o'clock in the forenoon of that day, at my
532 office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this write is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 13 day of July, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri, to Thomas Coleman, Asa E. Mitchell, Joseph McCann, B. F. Hume, Louis Tucker, William P. Johnson, Margaret Lennon, Annie Kroeger, Emil Kroeger.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 20 day of July, 1903, at the hour of 9.30 o'clock in the forenoon of that day, at my office in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff and Frederick Seymour Barrington is defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this write is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 13 day of July, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

533 *Subpœna for witnesses.*—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri, to Annie Morrison, Martha Lang, Herman Lang, Mrs. Fred Kroeger, Julius Kroeger, Robert Wiggins, R. W. Gliens, Thomas Leonard, Martha Evans, Jessie McCann, Charles Sack, J. W. Church, F. D. Monahan, Otto W. Koch.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for the township of Central, in the county of St. Louis, on the 10 day of August, 1903, at the hour of 9.30 o'clock in the forenoon of that day, at my office in Clayton, the township and county aforesaid, to testify on the trial of a cause wherein the State of Missouri is plaintiff, and Frederick Seymour Barrington is defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 4 day of August, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Subpœna for witnesses.—J. P.

STATE OF MISSOURI,
County of St. Louis, ss:

The State of Missouri, to H. T. Randle, J. Ollien, L. H. Hasserick, Isaac Bennett, William Mott, Frank Perry, Charles Meyers, Martha Coat, Charles Morrison, A. Gilbert, 3618 Dodier; W. E. Baumewets, 3637 North Market st.; J. Meyers.

You are hereby commanded to be and personally appear before me, I. W. Campbell, a justice of the peace within and for
534 the township of Central, in the county of St. Louis, on the 10 day of August, 1903, at the hour of 9.30 o'clock, last hour in the forenoon of that day, at my office, in the township and county aforesaid, to testify on the trial of a cause wherein State of Missouri is plaintiff, and Frederick Seymour Barrington is defendant, in behalf of the State. And hereof fail not at your peril. And the person or officer serving this write is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Given under my hand this 4th day of August, A. D. 1903.

I. W. CAMPBELL,
Justice of the Peace.

Doctor KOCH, being duly sworn by the defendant, testified as follows:

Direct examination by Mr. ALTHEIMER:

Q. What is your name?

A. Fred Koch.

Q. You are the coroner of St. Louis County and have been for some time?

A. Yes, sir.

Q. You were such on July 2nd, 1903?

A. Yes, sir.

Q. And held inquests?

A. Yes, sir.

Q. And held an inquest in this case of the State of Missouri vs. Seymour F. Barrington, or rather you held an inquest on the body of one supposed to be James P. McCann?

A. Yes, sir.

Q. At that time did certain witnesses appear before you, Doctor?

A. Yes, sir.

Q. And their statements were taken down in shorthand and typewritten—afterwards they were typewritten?

A. Yes, sir.

Q. Where are those?

A. In the circuit clerk's office. Some were taken in longhand.

Q. What I want, Doctor, is——

Mr. JOHNSTON. We object to this.

Mr. ALTHEIMER. When the testimony of witnesses was not material to the State the names of those witnesses were not
535 endorsed on this indictment, and it stands just as the other proposition did a while ago; now, the entire evidence of witnesses taken before the coroner is admissible to show whether they were material witnesses or not in this case, and then if any of those witnesses are not endorsed on the indictment we are entitled to have those witnesses excluded hereafter.

Q. Did certain witnesses appear before you at the inquest?

A. Yes, sir.

Q. Were the statements of those witnesses taken down in shorthand and afterwards transcribed in typewriting?

A. Yes, sir.

Q. Were they taken also in longhand? I mean by that did the party that took them in longhand, if they were taken in longhand, have the witnesses sign them in the presence of the coroner?

A. Yes, sir—not a complete statement.

Q. Are both of those statements, the typewritten and those in longhand, in court?

A. No, sir.

Q. Where are they?

A. They were filed with the circuit clerk.

Q. Both of them?

A. Yes, sir.

Mr. ALTHEIMER. If it please your honor, I would like to have both the statements taken at the coroner's inquest, the shorthand reduced to typewriting and the longhand statement.

Q. I herewith hand you certain papers [handing witness paper]. Are those papers a part of your records, or record, as coroner?

A. Yes, sir.

Q. Are those the records that were written out in longhand by Schrader?

A. Yes, sir.

Q. When did you have the typewritten, or shorthand notes which were typewritten, in your possession last?

A. On the day of the preliminary hearing.

Q. Then you have never had the typewritten statements in your hands since the preliminary hearing?

A. No, sir.

Mr. ALTHEIMER. I offer in evidence the longhand statements taken down and signed by the witnesses in the presence of the
536 coroner at the inquest.

Mr. JOHNSTON. We object to them.

COURT. Objection overruled.

Said statements were and are in words and figures as follows, to wit:

STATE OF MISSOURI,
County of St. Louis.

On the 2nd day of July, before the subscriber, coroner of the county of St. Louis, personally appeared B. L. Hume, who was duly sworn, to give evidence and the truth to say, concerning his knowledge of the manner and by whom James P. McCann, the person whose body was found at Bonfils, in the Wabash quarry on Taussig avenue, came to his death.

Thereupon the said B. T. Hume deposes and says as follows:

I live in Lexington, Kentucky. I knew James P. McCann. I married his sister. I knew him ever since 1872. Last Sunday I heard of McCann's death. I believed it to be Jim McCann and came here right away. I saw the body at Harrington & Sheehan on Morgan street. I looked at the body. I am positive it was Jim McCann.

I recognized a mole a little to the right of the stomach, and a scar a little above the mole.

B. T. HUME.

Subscribed and sworn to before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss.

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally W. E. Johnson, who was duly sworn to give evidence and the truth to say concerning his knowledge
537 of the manner by whom James P. McCann, the person whose body was lately found at Bonfils, in the Wabash quarry, came to his death.

Thereupon the said Wm. P. Johnson deposes and says as follows: I live in St. Louis and work for the Swope Shoe Co. I knew J. P. McCann. I sold him his last pair about one week before dedication day, April 30. I sold him a pair of low quarters shoes, an 8 or 8½, last D or E. We don't keep a record of cash sales. I could not swear that this is the pair I sold him, but it's the style I am not positive as to this last; it's either a D or E. I sold him another pair the same day; the same kind, but for another person, named Robinson. They were number 7½. They were later exchanged for a light shoe. I sold McCann exactly the same shoes for himself as these here, but I can not swear these are his. Shoes like this wear differently—3 mo., 6 mo.; some wear them two years.

McCann said he had been in Kentucky, and told me he wanted to locate here. He bought a pair for himself and later for a friend. I met him on Washington ave. and 6th st. on dedication day. He gave

us cards showing that he owns the Leland Hotel. He was perhaps 5 ft. 10 in. He weighed about 200 pounds.

WM. P. JOHNSON.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared before me J. W. Church, who was duly sworn to give evidence and the truth to say concerning his knowledge of the manner & by whom James P. McCann, the person whose body was found at Bonfils, in the Wabash quarry, came to his death.

538 Thereupon the said J. W. Church deposes and says as follows.

Thereupon the said J. W. Church deposes and says as follows: I first saw the body Sunday. I knew Mr. McCann since the 26th or 27th of April. I did not know Mr. McCann was dead until I saw it in the papers Sunday morning. I went to the grave of McCann when he was exhumed. I do not believe it could have been anybody else.

J. W. CHURCH.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared F. D. Monahan, who was duly sworn to give evidence and the truth to say concerning his knowledge of the manner and by whom James P. McCann, whose body has lately been found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death.

Thereupon said F. D. Monahan deposes and says: I am a motorman. I knew Mr. McCann about 6 yrs. I was at the grave where he was exhumed. I am positive it is J. P. McCann. I was at the grave about 3 hours. Lord Barrington asked whether he had two or three shots before you could see he was shot. There is no mistake about the identification; I saw a cut on his throat *on his throat* and side of the cheek.

F. D. MONAHAN.

Sworn to and subscribed before me.

OTTO W. KOCH.

STATE OF MISSOURI,
County of St. Louis, ss:

539 On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared Louis Tucker, who was duly sworn to give evidence and the truth to say concerning

his knowledge and the manner and by whom James P. McCann, the person whose body was lately found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death. Thereupon the said Louis Tucker deposes and says as follows:

I found this body in the rock quarry at Bonfils, on Taussig av., Thursday evening, to-day a week ago, at about 5 p. m. I saw the body, but did not know it was a body at first, and afterwards, when I came back from the store, I brought some men. One went and got his father. He told me to send for the coroner, which I did. I saw the body taken out. It was a man, naked—no clothing on him whatever. In the water the feet were nearest to the bank. There was much water in the quarry. He was in the S. west corner, the feet near the bank. I went to Bridgeton and telephoned for you. I left the body in the water. I did not see any strangers. The body was white. He seemed to have a mustache. He seemed like a large man. About ½ was out of the water. I saw no marks on his face. I rushed on to notify the coroner. I never saw McCann alive; that is, that I know. The quarry is about 200 yards from the street-car station at Bonfils.

LOUIS TUCKER.

Subscribed and sworn before me.

OTTO W. KOCH, *Mde., Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared Emil Krueger, who
340 was duly sworn to give evidence and the truth to say concerning his knowledge of the manner and by whom James P. McCann, the person whose body was found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death; thereupon the said Emil Krueger deposes and says, as follows: I am 13 yrs. old. I saw the body Friday in the quarry. He was laying on his back, his feet to the shore. I found one shoe about 12 yds. from the track. I found it when the wheat was cut. I heard no shots. I was home sleeping. I found the shoe between the switch and the depot. I found the shoes south of the track. I also found a stocking. That is the stocking I found. It was in the wheat, about 20 ft. from the shoes. I saw no blood spots on them. I found nothing else. The strings on the shoes were tied. They were clean. I know nobody by the name of McCann.

EMIL KRUEGER.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared Martha Lang, who was duly sworn to give evidence and the truth to say, concerning his knowledge

of the manner and by whom James P. McCann, the person whose body was found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death; thereupon the said Martha Lang deposes and says, as follows: I am 11 years old. I found a pocketbook near the quarry before the body was found and a razor handle and 4 loaded cartridges and one empty one. The pocketbook I found very near the bank of the quarry, about 4 or 5 feet. I found the razor handle next to it. There was no blade. There were blood stains on the handle. The pocketbook and razor handle I found Tuesday. The cartridges I found the Monday before the body was found, in the road
541 leading to the quarry. I gave them to Mr. Cabanne. I heard no noises. I live in the near house near the quarry.

MARTHA LANG.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared Fred Kroeger, who was duly sworn to give evidence and the truth to say, concerning his knowledge of the manner and by whom James P. McCann, the person whose body was found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death; thereupon the said Fred Krueger deposes and says, as follows:

I was at the quarry. I took a good look at the body. He was naked, good-sized man. He had a mustache. I had seen no strangers at the quarry. I went to the quarry on the 25th, to-day a week ago, at 6 o'clock in the afternoon. I had no time to take out the body, as my team was in the field, but told Tucker to get you. My wife had been up late, to about 11 o'clock p. m., about 8 days before the 25th of June. She told me that shooting had gone on in the direction of the quarry. She heard two shots and heard somebody hollering. She did not understand anything. We did not handle the body Friday. We telephoned from Pattonville for the coroner. In the quarry the face was up, about ½ covered by water. The feet were next to the shore. He lay flat on his back. I noticed no marks on his body. I thought I saw a small hole on the right side. I think the body was in the water 7 or 8 days when we found him. I don't know that anybody strange was out.

F. KRÜEGER.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

542 STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of St. Louis County, personally appeared Julius Krueger, who was duly sworn, to give evidence and the truth to say, concerning his knowledge of the manner and by whom James P. McCann, the person whose

body was found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death; thereupon the said Julius Krueger deposes and says as follows:

Louis Tucker called me and I went to the quarry. The head pointed east, the feet about ½ foot from the bank. The head pointed east. I heard two shots at about 11 o'clock two weeks ago (Thursday). I heard somebody cry before the shots were fired. I could not understand anything. I knew it was a man crying. I had not seen any strangers around. I did not help take out the body. I did not see any wounds. Chas. Graham Julius Graham helped bury the body. I was present when he was exhumed and know it was the same body buried the day before. In the quarry he lay on his back. I don't know that I ever saw him before. I found a shoe. I don't know whose. My brother found the other. It may be about ½ mile from the quarry on the street-car track, about 20 yards from the station. I don't know what size they were. They were low cut, strings tied. They were found in the wheat field—towards St. Louis, about 20 yards from the station. They were about 6 ft. apart. I found one in the afternoon. My brother found the other in the morning. They were about 4 feet from the track. They were in the first cut made with the binder, about 3 ft. from the edge of the wheat. The shoes there are the shoes found by my brother and me. I did not find anything else. I live about ½ mile from the quarry. My brother found a stocking. I did not see it.

JULIUS KRUEGER.

Sworn to and subscribed before me.

543 OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared C. G. Cabanne, who was duly sworn, to give evidence and the truth to say, concerning his knowledge of the manner and by whom James P. McCann, whose body was found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death; thereupon the said C. G. Cabanne deposes and says as follows:

About 12 o'clock I was ordered to go to Bonfils. There was a dead body there supposed to be J. P. McCann. A woman, Mrs. Krueger, told me she had heard shots and screams. We were told shoes, pocketbook, etc., had been found. Mrs. McCann identified her husband's pocketbook. I went to town directly to 29th and Franklin ave. Kirk and I arrested Barrington, put him in a westbound Benton car. At Sarah st. we telephoned for the patrol wagon. The wagon took him to the mounted district police station. From there Barrington was taken to Chief Desmond's office. Got there about 9.30. The Suburban Garden story that he went to the garden with two men and two women. That McCann there assaulted one woman, and got licked for it, as was also Barrington. This is the revolver

I found in Barrington's trunk, as also a cane. The trunk was at Union Station, taken down by a negro. That pocketbook I don't know. I never saw it. When Desmond showed him the jewelry he had thrown out of the wagon, but which had lodged in the mud, then he said the Suburban Garden story was a lie, and admitted he was at Bonfils with McCann that night, and then told the same story as should have happened at Bonfils instead of Suburban Garden.

C. G. CABANNE.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

544 STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared Margaret Lannon, who was duly sworn to give evidence and the truth to say concerning her knowledge of the manner and by whom James P. McCann, whose body was found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death. Thereupon the said Margaret Lannon deposes and says as follows:

I live at Bonfils Station. On June 17 or 18 I saw a stranger, which seems to be Barrington. I did not see his face, but his clothes, size, and walk are the same. He wore a silk hat.

MARGARET LANNON.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of St. Louis County, personally appeared Thomas Leonard, who was duly sworn to give evidence and the truth to say of his knowledge of the manner and by whom James P. McCann, the person whose body was found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death. Thereupon the said Thomas Leonard deposes and says as follows:

I knew James P. McCann. I saw him last on Thursday evening as he left his house. Barrington was with him. Barrington asked Mrs. McCann if she had headache powders. She had none. Mr. McCann told me to stay and take care of Mrs. McCann while he was gone. I did not see him alive again. I saw the body found in the quarry at Bonfils. I identify it positively as James P. McCann. I would not swear that this is his cane. Those I know to be his
545 shoes, and one of his stockings. I know McCann and Barrington on the picture.

THOS. LEONARD.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared Dr. H. T. Randle, who was duly sworn to give evidence and the truth to say concerning his knowledge of the manner and by whom James P. McCann, the person whose body was found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death. Thereupon the said Dr. H. T. Randle deposes and says as follows:

I am a physician. I was present at the post mortem of said body. After removal from the grave a search was made for wounds. We noticed gashes in the throat. The left cheek bone was crushed, and there found a hole near the base of the skull. We found there a spurred bullet. We probed further and found a bullet on the other side of the face. I recognize these bullets as the ones we found. The second bullet was found in the right cheek lodged against the teeth, in the inferior maxillary. The body was badly decomposed. He might have been in the water a week. Death was caused by the bullet entering the brain. The bullets are of 38 caliber. A body keeps better under water.

H. T. RANDLE, M. D.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner
546 of the county of St. Louis, personally appeared Mrs. Jessie C. McCann, who was duly sworn to give evidence and the truth to say concerning *his* knowledge of the manner and by whom James P. McCann, the person whose body was found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death. Thereupon the said Mrs. J. C. McCann deposes and says as follows:

My name is Jessie McCann. I am the wife of J. P. McCann. I saw him last June 18th between 7.30 and 8 p. m. He left the house with Barrington. They wanted to go to the drug store to get some headache powders. He never came back. I saw the body at the quarry (Wabash) in Bonfils, in St. Louis County. I looked closely at the body, and am positive it was my husband, James P. McCann. I saw Barrington at my home the next morning. He said he didn't know where Mr. McCann was; McCann got headache powders; met two gents & ladies; they went to Suburban Garden; met friends and ladies; McCann and ladies went aside; a fight ensued. Barrington wanted to protect McCann; McCann's wrist was sprained or broken. McCann had said to him that we would come home soon, but didn't like to now on account of the trouble. He wanted to tele-

phone for money later. Barrington came to me and said McCann wanted $300 sent him to Centralia, Ills., in a registered letter. I rec'd signed messages from McCann. The message ran as follows:

"FRED: I am in safe hands and getting better. Don't send what I asked for. I have sufficient funds at the present time. Take care of Jessie, and don't let her worry. Take care of the house and do what I told you. You keep your promise and I will keep mine.

"E. M. for JIM."

A messenger boy brought the message to the door. It was for Barrington. I read the message first. Barrington seemed to be eager to have it first. It was written in purple ink, exclosed in two envelopes. The inner envelope addressed with typewriter. I
547 carried the message with me for several days and then put it in my dresser drawer. Barrington took it out of my dresser drawer; at least he had it. I sent a letter to J. P. McCann to Vandalia and Centralia, Ills. Barrington said that he told the parties that I would communicate only with Mr. McCann and no third party. He didn' know I sent the registered letters. I told him afterwards. I was present when Barrington told Chief Desmond about the assault in Suburban Garden. Barrington said he had repremanded McCann about a remark he had made and that McCann had hit him with a cane. McCann told me that he wanted to go to some friends and have some supper with them. I thought I wan invited too, but found out I wasn't. They didn't say they wanted to go to the country. He always came back when promised. Barrington said that if I mentioned about the trouble to the police it would bring a disgrace. Later on I told Chief Desmond the story. I told Desmond about the disappearance. Barrington after his first arrest came to my house again. He wanted money because he had soiled his clothes in protecting McCann. He had marks on him which he claimed to have gotten by protecting McCann.

He says McCann and the rest left him voluntarily in a carriage, a rickety carriage and bay horse, & left Barrington alone. Mr. McCann told me Tuesday that he had bought a revolver for Barrington, because he insisted upon it. He bought it at Simmons Hardware Co. I saw it at Chief Desmond's. Barrington said it was his. McCann had no knife or razor. I know Barrington had a knife. Mr. McCann had a cane when he left. This is the cane, I am positive. Barrington said McCann gave him the cane, and he brought it back. This is Mr. Barrington. I know Mr. McCann's pocketbook. His & mine are exactly the same. They were brought at the same time. I placed a mark on McCann's pocketbook at Desmond's office. This is the pocketbook. I knew McCann had money; I, myself, gave him a $5 gold piece. This is the stocking McCann wore that day. I selected them myself. He sometimes wore an 8 or 8½ shoe.
548 Those are his shoes. He bought them about the 30th of April (Dedication Day). He frequently put them on without untying them. His two front teeth were prominent. He had some upper

and lower teeth filled; also a crowned tooth. The latter had been filled before. I think he had four filled. The work was done probably in Febr. or Mch. of this year in St. Louis.

Mrs. JESSIE C. MCCANN.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared Frank Perry, who was duly sworn to give evidence and the truth to say concerning his knowledge of the manner and by whom James P. McCann, whose body was lately found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death. Thereupon the said Frank Perry deposes and says as follows:

I live at Eden. Was raised principally in Missouri. I work for the St. L., St. Chas. and Western for about 2½ yrs. On June 19th I was due to leave Fee Fee Road. I am positive I passed this man Barrington about 5.45 and 5.50. He was then walking through the weeds. Going back to Wellston we passed him. When he saw we watched him, he turned west. Passed him at 7.45. Going west, I passed him close to the Terminal tracks. He had braced up and walked better. I got a good look at him when about 20 or 25 feet from him, and were going about 6 or 8 miles per hour. He wore a straw hat—Panama kind; handkerchief around his neck. He had a cane & wore a Prince Albert. His trousers were dirty.

FRANK PERRY.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

549 STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared G. T. McNamee, to give evidence and the truth to say concerning his knowledge of the manner and by whom James P. McCann, the person whose body was lately found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death. Thereupon the said G. T. McNamee deposes and says as follows:

I am captain of police, mounted district, St. Louis. I know Mr. Barrington. After the arrest Barrington told me he and McCann went to the Suburban Garden and McCann had a fight. I then took Barrington to the Four Courts. Here he stated that his first story told to Desmond was untrue. He admitted to Desmond that he had lied. He stated to me that he was attacked. I asked him when he had seen McCann last. He refused to answer this, basing on his constitutional rights. I was not present at first when he was brought to the body. A detective told him that the coroner was probing for the

bullet. Thereupon Barrington asked to be allowed to view the body. This was done. He asked the operator several questions about the wounds. I don't anything about the baggage of Barrington. I was notified at about 9 a. m. Saturday morning, the 27th of June. Detective Kirk told me a body had been found in the county. Kirk and Officer Ball went out; afterwards Cabanne also. I was told it was McCann about 4 p. m. I did not know McCann. It seems to me I've met him, but I'm not positive. I was at the relief ass'n, and at about 4.30 p. m. Sat., and was told that the body had been identified as McCann's and that Barrington had been arrested. Barrington admitted that he was at Bonfils with McCann.

G. T. McNAMEE,
Captain of Police, Mounted District, St. Louis.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

550 STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared Thomas Coleman, who was duly sworn to give evidence and the truth to say concerning his knowledge of the manner and by whom James P. McCann, the person whose body was lately found at Bonfils, in the Wabash quarry, on Taussig ave., came to his death. Thereupon the said Thomas Coleman deposes and says as follows:

I was watchman. I live at Fairmount Park. I work for the Wabash. At 11 o'clock p. m., June 18, I was about ¾ mi. from Bonfils Station. On that night I heard two shots fired south of where I was. I couldn't say exactly how far it was from me. I thought it might be near the quarry. Before the first shot I heard nothing. After the first shot I heard some one say "Do not kill me." After the second shot I heard some one say "Save my life." Just then the train passed. I think I heard a third shot, but am not sure. I did not go to the spot or quarry.

THOMAS COLEMAN.
Per O. W. KOCH.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared John Oellien, who was duly sworn to give evidence and the truth to say concerning his knowledge of the manner and by whom James P. McCann, the person whose body was lately found at Bonfils, in the Wabash
551 quarry, on Taussig ave., came to his death. Thereupon the said John Oellien deposes and says as follows:

I work for the St. L., St. Chas. and Western E. R. R. I change time every week. On June 18th I left Wellston on the even hour.

I ran as far as Bonfils Station. I left Wellston at 10 p. m. Passengers got on the car. As I changed my handles a lady asked me to help her put an invalid on the car, which I did. I carried two passengers to Bonfils. One was broad shouldered, wore heavy mustache, and what seemed to be a Panama hat. There was a black Fedora hat in the aisle which I told the man to pick up. I carried two passengers to Bonfils. We stopped there 35 min. We stopped at the station. The two passengers got off and walked up Taussig ave. The taller man walked to the right, and both turned to the left. This was 10.35 p. m. I started reading the paper, and about 10 mi. later heard a shot and a scream. I told my conductor about it. We heard another shot. Then all was still. These shots seemed to come from a S. W. direction. I thought at first some boys at Mr. Krieger's house were crying. In the car I knew there were two men, but could see only one. I carried back no passengers. Next day I went to work at 2.30 p. m. My conductor is Ike Bennett. The larger man seemed to be fully as tall as I am.

JOHN W. OELLIEN.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before me, the subscriber, coroner of the county of St. Louis, personally appeared Wm. Mott, who was duly sworn to give evidence and the truth to say, concerning his knowledge of the manner and by whom James P. McCann, the person whose body was lately found at Bonfils, in the Wabash
552 quarry, on Taussig ave., came to his death. Thereupon the said Wm. Mott deposes and says as follows:

I live in St. Louis, 6205 Ridge ave. I am motorman for 3 yrs. for the St. L., St. Chas. and Western R. R. On the morning of the 19th of June I left Wellston at 5.15. Friday morning I saw Barrington near Pattonville, walking on the track. His back was turned towards me. My car was running about 8 or 9 mi. per hour. I only ran to Pattonville. I left the Fee Fee Road at 5.51. Going back I saw Barrington again. He tried to hide himself. The supt. was with me after we left Wellston again. All together I saw him 5 times. At Wellston I asked for an officer, and told Myers to have him arrested. The second time I met him I got a good look at his face. I saw him last about 8.02 or 8.03 a. m. He carried a cane and wore a Panama or straw hat. I never had seen him before. That man sitting there is Barrington.

WM. MOTT.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared Charles Sacks, who was duly sworn to give evidence and the truth to say concerning his knowledge of the manner and by whom James P. McCann, the person whose body was lately found at Bonfils, in the Wabash quarry on Taussig ave., came to his death. Thereupon the said Chas. Sack deposes and says:

I am motorman for St. L., St. Chas. and Western E. R. R. I was born in St. Louis. I worked for the roa/ about 2 years. On June 19th, in the morning, I saw a man walk in on Easton ave. at about 8.02. This man, Barrington, had a cane and wore a Panama
555 hat. He was going east. He tried to hide his face. He had his hands up to his face, a handkerchief around his neck. My car ran very slow, about 6 miles an hour. I never saw the man before, nor again the same day. I am positive it was this man here, Barrington. He wore a Prince Albert and was very muddy.

CHAS. SACK.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

STATE OF MISSOURI,
County of St. Louis, ss:

On the 2nd day of July, 1903, before the subscriber, coroner of the county of St. Louis, personally appeared Isaac Bennett, who was duly sworn to give evidence and the truth to say, concerning his knowledge of the manner and by whom James P. McCann, whose body was lately found at Bonfils, in the Wabash quarry, on Taussig avenue, came to his death. Thereupon the said Isaac Bennett deposes and says as follows: I left Wellston at 10 p. m. We carried six passengers; two of them to Bonfils; one of them is Barrington. They asked when the last car left, which I told them. The taller gentleman spoke to me. He told me they wanted to go to Bonfils. I had told him that we didn't go any further. We were joking together. Barrington wore a black fedora, the taller one a Panama. The taller one had a cane and wore a light suit, Barrington a dark suit. I don't know where they went to. After we stopped at Bonfils I turned the trolley in about 10 or 15 min. I heard a shot and outcry from the southern direction, & afterwards a second shot.

ISAAC BENNETT.

Sworn to and subscribed before me.

OTTO W. KOCH, M. D., *Coroner.*

554 (Examination of Dr. Otto W. Koch continued.)

Q. I will ask you, Doctor Koch, whether these shorthand notes which were afterwards reduced to typewriting—whether they were taken at Clayton, St. Louis County, on July 2nd, 1903, before you, as coroner, at the coroner's inquest, in the case of the State of

Missouri vs. Seymour F. Barrington, charged with the killing of James P. McCann—whether the statements as written in typewriting from the shorthand notes are more fully set out in these longhand notes than they are in the shorthand notes?

Mr. JOHNSTON. I object to that question.

Q. I mean—I will ask you whether the notes taken in shorthand and afterwards transcribed in typewriting were more lengthy than those taken in longhand?

Mr. JOHNSTON. I will now withdraw my objection.

A. The statements taken in shorthand are more complete than those taken down in longhand.

Q. That is all.

Mr. R. L. JOHNSTON, being recalled by Mr. Altheimer, testified further as follows:

Q. Mr. Johnston, have you the typewritten statements taken before the coroner on July 2nd, 1903, of the testimony of witnesses given at the inquest held over the body of one supposed to be the body of James P. McCann?

Mr. GARDNER. We object to that as irrelevant and immaterial.

Mr. GROVER. It is our object to have those notes brought into court and to prove that they are transcripts of the shorthand notes taken at the inquest and that they are full and more complete and contain more evidence than those taken in longhand.

COURT. I will sustain the objection.

555 And the court then and there excluded said evidence, to which action of the court in sustaining said objection and excluding said evidence the defendant then and there duly excepted and still excepts.

And thereafter the court decided that the subpœnas of witnesses subpœnæd before the grand jury in the finding of said indictment should not be ordered produced in court, to which action of the court the defendant then and there duly excepted and still excepts.

The foregoing was all of the evidence offered or received in the hearing of said motion, and the court reserved its decision thereon.

On Nov. 2, 1903, the court having been fully advised on said motion to quash, ordered that the same be overruled, to which order overruling the same the defendant then and there duly excepted and still excepts; which order overruling said motion to quash was entered upon the record of said court, in words and figures as follows:

27th day, Monday, Nov. 2nd, 1903.

STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Comes now this day the State's attorney for the State, and said defendant being in custody, is brought into court and appears in his own proper person, and the motion of said defendant to quash the

indictment herein against him, and all and each of the counts thereof having been duly and fully considered, it is ordered and *da*judged by the court that said motion to quash the indictment, as well
556 to quash each count thereof, be, and the same is hereby, overruled.

On November 7th, 1903, defendant filed a demurrer to the indictment, which demurrer, omitting the caption thereof, was and is in words and figures as follows, to wit:

STATE OF MISSOURI,
County of St. Louis, ss:

In the Circuit Court, county of St. Louis, State of Missouri. September term, 1903.

STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT. } No. 9215.

Demurrer.

Now comes the defendant, Frederick Seymour Barrington, and demurs to the indictment in the above-entitled cause, and to each and all of the counts thereof, as follows:

I.

Defendant demurs to the fifth count of said indictment because—

1st. It does not charge or set forth sufficient facts to constitute a criminal offense.

2nd. It does not state sufficient facts to charge defendant with murder in the perpetration of robbery.

3rd. It is vague, indefinite, uncertain, and inspecific.

4th. It is also vague, indefinite, uncertain, and inspecific as to whether it is intended to charge murder in the first or second degree or murder with or without weapons, devices or instruments; and it is also vague, indefinite, uncertain, and argumentative; and it is also intermingled with conclusions of law and evidential matter and surplusage, as not to sufficiently or specifically inform defendant of the nature and cause of the accusation against him, or as to inform him whether or not said count is intended to charge him with
557 murder in the perpetration of robbery.

5th. It is inconsistent with and repugnant to counts one, two, and three of said indictment, in that it attempts to charge a homicide to have been committed by some manner, means, devices, instruments, and weapons unknown to the grand jurors, whereas said counts one, two, and three allege that the manner, means, devices, and instruments of such homicide were known to the grand jurors.

6th. It does not specifically, definitely, or with certainty charge that defendant killed or murdered the alleged deceased nor inform

defendant of what act he is charged to have done from which the alleged deceased died.

7th. Said count omits to state that any offense was committed contrary to the statutes in such cases provided.

8th. It is argumentative, indefinite, uncertain, and inspecific in that it attempts to charge deliberation and premeditation by conclusions of law and insufficient matters of evidence.

Defendant demurs to the fourth count of said indictment, because—

1st. It does not charge or set forth sufficient facts to constitute a criminal offense.

2nd. It does not specifically, definitely, or with certainty charge that defendant killed or murdered the alleged deceased nor inform defendant of what act he is charged to have done from which the alleged deceased died.

3rd. It is consistent with and repugnant to counts one, two, and three in that it attempts to charge a homicide to have been committed by a "way and manner and by some means, instruments, and weapons" unknown to the grand jurors, whereas said counts one, two, and three allege that the way, manner, means, instruments, and weapons employed in the pretended homicide were known to the grand jurors.

558 4th. It is also vague, indefinite, uncertain, and inspecific as to whether it is intended to charge murder with or without instruments and weapons, and fails to inform the defendant of the nature and cause of the accusation against him.

5th. It is vague, indefinite, uncertain, and inspecific in that it charges that James P. McCann, by unknown means and weapons, "deprived" James P. McCann of life, and is also so lacking in words governing the word "deprived" as to strip the allegations of grammatical or substantial meaning and also for said reason it fails to charge a criminal offense.

III.

Defendant demurs to the third count of said indictment, because—

1st. It does not charge or set forth sufficient facts to constitute a criminal offense.

2nd. It is inconsistent with and repugnant to counts one, two, four, and five in that it attempts to charge a homicide to have been committed by means of wounds from deadly weapons and suffocation with water, whereas said counts four and five attempt to charge a homicide to have been committed by means and weapons unknown to the grand jurors, and whereas count one attempts to charge a homicide by shooting with a pistol only, and whereas count two attempts to charge a homicide by drowning.

3rd. It is vague, indefinite, and uncertain throughout.

4th. It is vague, indefinite, uncertain, and inspecific as to what caused or was the proximate cause of the alleged death of the alleged deceased, and it attempts to charge a death by two immediate and proximate causes.

5th. It is vague, indefinite, uncertain, argumentative, and inspecific in that it charges that "immediately after inflicting gunshot wounds" that defendant threw the alleged deceased into a pond, whereas no "gunshot" wounds or use of a "gun" are otherwise alleged or referred to in said indictment.

559 6th. It is vague, indefinite, and meaningless in its attempt to state that something was "shot off and discharged."

7th. It is vague, indefinite, uncertain, inspecific, and argumentative, so far as it attempts to charge the giving of mortal wounds.

IV.

Defendant demurs to the second count of said indictment, because—

1st. It does not charge or set forth sufficient facts to constitute a criminal offense.

2nd. It is inconsistent with and repugnant to count one, three, four, and five in that it attempts to charge a homicide by means of drowning, whereas counts four and five attempt to charge a homicide in a manner and by means unknown to the grand jurors, and whereas count one attempts to charge a homicide by shooting and count three attempts to charge a homicide by shooting and drowning.

3rd. It is vague, indefinite, and uncertain.

V.

Defendant demures to the first count of said indictment, because—

1st. It does not charge or set forth sufficient facts to constitute a criminal offense.

2nd. It is vague, indefinite, and uncertain.

3rd. It does not set forth sufficient facts to charge an assault or assault and battery.

4th. It is inconsistent with and repugnant to all of the other counts in said indictment.

VI.

Defendant demurs to the entire indictment, because—

1st. Because none of said counts, nor do all of them together, charge or set forth sufficient facts to constitute a criminal offense.

560 2nd. Because each of said counts is inconsistent with and repugnant to all of the other counts.

3rd. Because there is an improper joinder of counts and pretended offenses in said indictment.

4th. Because all of said counts are vague, indefinite, uncertain, and inspecific.

5th. Because none of said counts shows the kind and nature of assault that is attempted therein to be alleged.

6th. Because of the inconsistency, multiplicity, and repugnancy of said counts the defendant is being proceeded against in violation of the State and Federal guarantee of due process of law and in violation of his constitutional right to be specifically informed of the nature and cause of the accusation against him.

FREDERICK SEYMOUR BARRINGTON,
Defendant.

SHELLEY GROVER &
BENO ALTHEIMER, *Attys. for Deft.*

Said demurrer was endorsed as follows:
"Filed Nov. 7th, 1903. F. J. Hollocher, clerk."
That on November 7th, 1903, the said demurrer coming on for hearing before said court, the court ordered that the same be overruled; to which order overruling the said demurrer defendant then and there duly excepted and still excepts, which order overruling the same was entered upon said court's record in words and figures as hereinafter set forth.

Whereupon on November 7th, 1903, the defendant filed his plea in abatement, which, omitting the caption thereof, was in words and figures as follows, to wit:

561 In the Circuit Court for the county of St. Louis, State of Missouri. September term, 1903.

STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT. } No. 9215.

Plea in abatement.

Now comes the defendant, Frederick Seymour Barrington, and makes this his plea of abatement in the above-entitled cause to the indictment thereto for the reasons as follows:

That the prosecuting attorney, at the time of the return of said indictment into court, and prior thereto, had knowledge of certain witnesses on the part of the State in this cause, and that said prosecuting attorney intentionally refrained from endorsing the name of one or more of said witnesses on said indictment, for the purpose and to the end that said witness or witnesses should be sprung as a surprise upon said defendant in the trial of case and so that defendant could not make adequate preparation to meet the evidence and testimony of said witness or witnesses. That the names and places of residences, identity, and whereabouts of said witness or witnesses are unknown to the defendant, and that he is entitled, as a constitutional right, to know the name or names of said witness or witnesses and to have his, her, or their names endorsed upon any indictment against him charging any crime concerning which they are to appear

against said defendant. That the defendant is a native citizen and subject of the King of Great Britain and Emperor of India, and as such is entitled, under and by virtue of the treaties now existing between the Government of the United States and the Government of Great Britain, as well as under the laws and Constitution of the Federal Government, and also under the laws of nations, to fair and impartial trial of such cause, to be fully informed of the nature
562 and the cause of the accusation against him, and to know who are the witnesses against him in said cause, in order that he may have a fair trial thereof and secure justice therein; and under said treaties, laws, and constitutional rights, as well as under the laws of this State, defendant alleges this ground for a plea in abatement, and that he be allowed, by evidence of witnesses and other evidence, the allegations herein contained.

BENO ALTHEIMER &
SHELLEY GROVER,
Attorneys for Defendant.

FREDERICK SEYMOUR BARRINGTON,
Defendant.

Said plea in abatement was endorsed in words and figures as follows:

"Filed Nov. 7th, 1903. F. J. Hollocher, clerk."

Whereupon the State filed a reply to said plea in abatement, which reply was in words and figures as follows, to wit:

In the Circuit Court of St. Louis, State of Missouri. September term, 1903.

STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Now comes the plaintiff herein, by Rowland L. Johnston, prosecuting attorney within and for the county of St. Louis and State aforesaid, and, for reply to the plea in abatement heretofore filed by defendant, denies each and every allegation in said motion contained.

R. L. JOHNSTON,
Prosecuting Attorney,
By A. E. L. GARDNER,
Asst. Pros. Atty.

563 Said reply was endorsed in words and figures, as follows:
"Filed Nov. 7th, 1903. F. J. Hollocher, clerk."

Thereupon, on Nov. 7th, 1903, the said cause coming on to be heard on the plea in abatement before the court and without a jury

and upon the reply of the State therto the following proceedings were had, to-wit:

STATE OF MISSOURI *vs.* FREDERICK SEYMOUR BARRINGTON.	Arariginment, November 7th, 1903.

COURT. Let the record show that in the case of the State of Missouri against F. Seymour Barrington the objections to the evidence made by the State at the beginning of the taking of oral testimony are overruled by the court, and the motion of the defendant for the court to require the State to produce the subpœnas issued to compel the attendance of witnesses before the grand jury at the present term of this court is by the court overruled, and the State's objection to the introduction of said subpœnas sustained, to both of which rulings defendant, by counsel, then and there duly excepted and at the time save exception.

Mr. ALTHEIMER. Let the record show that as to the opinion of the court in reference to the motion to quash, we desire to save our exceptions and we now file a demurrer to the indictment.

This demurrer being overruled by the court, defendant, by counsel, then and there duly excepted and at the time saved exception.

Mr. ALTHEIMER. I desire to file a plea in abatement.

COURT. I will ask you to read that, Mr. Altheimer.

(Mr. Altheimer complies.)

564 *Stipulation.*

It is agreed that the evidence offered on the motion to quash will be considered as evidence here, and all points of objection and exception there on both sides be considered as made here.

COURT. Let the record show that the evidence offered on the motion to quash is here submitted to the court on the plea in abatement.

Mr. GARDNER. And that the State files a general denial to the plea in abatement.

Mr. F. SEYMOUR BARRINGTON, the defendant, being duly sworn on his own behalf, testified as follows:

Direct examination by Mr. GROVER:

Q. You are defendant in the case of the State of Missouri against F. Seymour Barrington?

A. Yes, sir.

Q. Where were you born?

A. Barrack Pore, near Calcutta, Presidency of Bengal, East India.

Q. Your parents were born in England, were they?

A. Yes, sir.

Q. You are an English subject?

A. Yes, sir.

Q. Have you ever renounced your citizenship to the King of Great Britain, Emperor of India?

A. No, sir.

Q. You have never renounced your citizenship?

A. No, sir.

Cross-examination by Mr. GARDNER:

Q. What year were you born in?

A. '64, 10th of June.

Q. You say you were born in East India?

A. Yes, sir.

Q. Was your father living—how long had your father been living there at that time?

A. He was an officer in the English service at the time of my birth.

565 Q. Where had he come from; was he a native of East India?

A. He was a native of the south of England.

Q. Where?

A. South of England.

Q. What is south of England?

A. South of England—south skirts of England.

Q. Where?

A. A place near Brighton; the suburbs of Brighton.

Q. After your birth how long was it until you left East India?

A. Between ten and eleven months, sir. My father remained behind in India; my mother, my nurse, and sister came to England. My father remained three years longer.

Q. Then you returned to England?

A. I returned with my mother, sister, and ayeh; that is a nurse—a native nurse of India—to England.

Q. How long have you been in the United States?

Mr. ALTHEIMER. We object.

Mr. GARDNER. He states that he has never declared his citizenship, and I think I can show that he has been here many years and probably that he has taken out citizenship papers might be shown, or the fact that he is a citizen. Probably he has resided here since he has been of age. What if he made a statement that he came here when he was a child and resided here all his life and conducted all his business affairs here and was devoted to the country? I think it is legitimate, on cross-examination, to show that he is not a foreign citizen and that he had voted at elections here.

Mr. GROVER. No objection to that.

Q. How long have you been in the United States?

Mr. GROVER. We object to that as immaterial. There are only two ways a man can become a citizen, one by naturalization taken out by himself and one by naturalization during his minority; those are the only two ways. If he was born abroad this question of how long he lived in the United States does not cut any figure.

566 Mr. GARDNER. I want to know as to how long he has been here in America and if he was brought here in his minority.

COURT. You may ask him.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Did you come here before you were twenty-one?

A. I crossed twelve times. I first came across with my father to Canada.

Q. You came direct from your English home to Canada?

A. No; to my sister here in Canada.

Q. Did you ever come to the United States before you were twenty-one years of age?

A. Yes, sir.

Q. You say that you had been in the United States twelve times during the time of your residence in England. Did you come here before you were twenty-one?

A. As near as I can remember we made four journeys, as far as I can remember—may be three, four, or five—I don't know how many, but this last time is twelve times I crossed the Atlantic.

Q. Before you were twenty-one?

A. Before I was of age—three, four, or five times.

Q. You were accompanied by your father?

A. Not the second time.

Mr. ALTHEIMER. We object to that as immaterial. A man may come over before he is twenty-one or after he is twenty-one and not be a citizen.

Mr. GARDNER. I want to show that his father came over and took up his residence here.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. I asked you if you were accompanied by your parents on any of these trips?

A. I was.

567 Q. The first trip?

A. Yes, sir.

Q. You were an infant then?

A. Yes, sir.

Q. Was that the only time you were accompanied by your parents?

A. Twice. The second time by my mother and sister.

Q. What age were you then?

A. Nine years of age at that time; and by my father the third time.

Q. What age were you then?

A. Between sixteen and seventeen—only a brief visit—about three weeks.

Q. You visited then the United States?

A. Merely visited.

Q. Was your father then a British subject?

A. Yes, sir; always was.

Q. Do you know whether or not he ever applied for naturalization papers?

A. I do.

Q. Did he?

A. He never did. He simply visited relatives in this country.

Q. He was here how long?

Mr. ALTHEIMER. We object. He has told that.

Q. Three weeks I believe. You returned to England?

Q. To England with my parents.

Q. Now, that was the only time that your parents ever brought you over here before you were twenty-one years of age?

A. Three or four times—twice accompanied by father and once by my mother and sister.

Q. And you came to the United States?

A. Came to the United States the same time that we visited Canada and went home from New York.

Q. You say you have never made application for naturalization papers?

A. Never.

The COURT. The court, on the plea in abatement and the reply to the same, having heard the evidence adduced, finds that the defendant is a native citizen and subject of the King of Great Britain and Emperor of India, and finds all the other issues in favor of
568 the State and against the defendant; to which findings against the defendant, defendant then and there duly excepted and at the time saved exception.

Mr. GROVER. It is generaly understood that all adverse rulings are excepted to.

COURT. To written papers, but not to testimony.

COURT. Let the record show that the defendant being asked by the court to plead to the indictment and each count thereof, pleads, through his counsel, not guilty.

Mr. GROVER. To each and every count in the indictment and to the whole indictment.

The foregoing constitutes all of the evidence offered or received in the hearing of said plea in abatement, and the court being fully advised of the premises, on Nov. 7th, 1903, made and rendered the following finding, decision, and judgment, and caused the same to be entered upon the record, in words and figures as follows:

Forty-second day, Saturday, November 7th, 1903.

STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Comes now on this day the prosecuting attorney for and on behalf of the State, and said defendant, being in custody is brought into court, and appears in his own proper person, as well as by his coun-

sel, and files and submits to the court his demurrer to the indictment in this cause, and to each and all of the counts thereof; and the court having duly and fully considered said demurrer, doth now hereby overrule the same. Plea in abatement filed by defendant; reply thereto filed; and the issue raised in said plea in abatement and the reply thereto being now submitted to the court upon all the evidence adduced, the court doth find that the defendant
569 is a citizen of Great Britain and subject of the King of Great Britain and Emperor of India, and as to all other matters contained in said plea in abatement, the court finds for the State and against the defendant, and doth accordingly order and adjudge that the defendant take nothing by his plea in abatement. And said defendant being now formally arraigned upon the indictment herein against him, pleads "not guilty" to each and every count therein contained, and to the whole of said indictment, and for trial puts himself upon the country, and the State's attorney doth the like. Whereupon said defendant is remanded to the custody of the county jailer. Ordered by the court, the necessity appearing therefor that the official stenographer of this court, do, and he is hereby ordered and directed to furnish a complete transcript of his notes taken in this cause to the present day, for the use of the court.

To which finding, decision and judgment on said plea in abatement, except the part thereof which finds defendant to be a citizen of Great Britain and a subject of the King of Great Britain and Emperor of India, the defendant at the time of the rendition thereof duly excepted and still excepts.

On December 24th, 1903, defendant filed an application for citation for contempt against certain parties, which application was in words and figures as follows, to-wit:

In the Circuit Court of St. Louis County, in the State of Missouri.
September term, 1903.

STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Application for citation for contempt.

Now comes defendant in the above-entitled cause and states:
570 That he is the defendant in said cause, in which he is charged with murder in the first degree, and that his trial on said charge is set for hearing in said court on the 25th day of January, 1904.

That one William Garen, and one Oscar Messing, alias Oscar Dane, and the St. Louis Theatre Co., a corporation, and Victory Bateman, and divers other persons have combined, confederated, and conspired between and among themselves for the purpose of doing the acts hereinafter mentioned, and of producing a certain

dramatic and theatrical play and entertainment, at a certain public theatre and playhouse known as Havlin's Theatre in the city of St. Louis, Missouri, which theatre and playhouse is operated by said St. Louis Theatre Co. for the making of money, and of which company, theatre, and playhouse the said William Garen is the manager, and which play and entertainment has been named and is called by said conspirators as "The Desperate Lord Barrington."

That the said play and the title thereof was constructed and selected by the said conspirators because of the fact that defendant is charged with murder in the first degree in said cause, and because defendant has been contemptiously referred to by the press and many persons in the city of St. Louis and in St. Louis County, and also throughout the State of Missouri, and elsewhere throughout the United States, "Lord Barrington," and also because of rumors, and also he'rsay communications, concerning the details of the life of said defendant and of the alleged murder aforesaid, and that said plea deals with said rumored details.

That in said play, the said conspirators have made out this defendant to be a villain and intend to have said play produced and acted at the theatre and playhouse aforesaid on the 27th, 28th, 29th, 30th, and 31st of December, and on the 1st and 2nd day of January,
571 1904, and also intend to play and act the same and cause the same to be played and acted at other cities in the United States. That the playhouse and theatre at which said play is intended to be produced in the city of St. Louis is within eight miles of the court-house where defendant is to be tried, and within six miles of the boundary of St. Louis County, and is near the business center of the city of St. Louis, and on the corner of 6th and Walnut street in said city, and in immediate proximity of the street car lines that go from said city into and throughout St. Louis County.

That inhabitants of St. Louis County are accustomed to go to the city of St. Louis for theatrical entertainment, and also to the said playhouse and theatre for such entertainment, and that the said city is the chief place and resort of the inhabitants of St. Louis County for the purpose of commerce, business, and entertainment—theatrical and otherwise.

That if said play is produced it will poison the minds of the inhabitants of St. Louis County abainst defendant; will prejudice said inhabitants against said defendant in his trial for the said alleged crime; will tend to influence the verdict and decision of the said cause wherein defendant is charged with murder; will also tend to have such influence against defendant; will tend to and will increase the expense of defendant in making his defense, in that he will be compelled to overcome the prejudice created by said play; will be compelled to expend money in and about procuring a change of venue in said cause on account of said prejudice, and will be compelled to enter into many proceedings which otherwise would not be

necessary to his defense. That pursuant to said conspiracy the said conspirators have caused said play to be advertised, have given information to the daily press of the city of St. Louis concerning the same, and the intention to act the same, knowing that the
572 press would publish the same and thereby advertise the same in said city, in this county, throughout the State of Missouri, and throughout the United States. That the information given to the press aforesaid has been circulated in this county, and in all the places aforesaid, and has already created prejudice against the defendant, and has a tendency to create such prejudice.

That pursuant to said conspiracy the said conspirators have caused large placards, bills, prints, and advertisements to be pasted up upon billboards throughout the city of St. Louis, advertising said play and the intention to play the same; that one of said bills is forty feet long, fifteen feet high, in large red and flashing letters, in words and figures as follows, to wit:

The Desperate Lord Barrington, and states that the same will be given New Year's week; which bill contains a picture of murderous assaults and the rescue of a woman from a dive by officers. That similar and other bills have also been caused to be posted by said conspirators throughout said city. That defendant files as part of this application exhibits A, B, C, D, E, F, G, H, which are copies of the said bills and the said newspaper and other advertisements, and asks the court to consider as part hereof. That said conspirators have caused advertisements of said play to appear in the Post-Dispatch, the St. Louis Republic, the St. Louis Globe-Democrat, and other daily newspapers published in said city and of general circulation in said city, in this county, and throughout the State of Missouri and the United States, and caused the said newspaper advertisements in the words, "The Desperate Lord Barington," to be circulated in all the places aforesaid; and that said newspapers are the chief daily papers circulated among and generally read by the inhabitants of St. Louis County.

That one of said placards, posted up for public inspection and for advertisement of said play, is located in the northwest corner
573 of said theatre's lobby, the same being a public place where all the general patrons of said theatre can see the same, is two feet long and eight inches high, and is in the following words and figures: "Mr. Dane has been especially engaged to appear with The Desperate Lord Barrington—a wonderful play of the sublime passion and intense villains Sunday matinee—Dec. 27th." That said theatre company is a corporation created and organized under the laws of the State of Missouri.

That in furtherance of said conspiracy the said conspirators caused to be published an advertisement in the program of said theatre and playhouse, which program was circulated among the general public attending said theatre on Dec. 23, 1903, and also on Dec. 22, 21, and

20th, 1903, in the city of St. Louis, Missouri, which advertisement was in words and figures as follows, to-wit:

"Havlings next Sunday matinee, Dec. 27th. Special matinee New Year's (Friday). Miss Victory Bateman and Mr. Oscar Dane in The Desperate Lord Barrington. The acme of sensational melodrama. A play filled with thrills, throbs, laughter, and tears. It quickens the pulse beats, excites the emotions, and stirs the better nature of every auditor. A play in which virtue wins and the villains get all that is coming to them. Lord Barrington—this strange man since coming into the West has been the hero of many escapades, and is now confined in the county jail on the charge of murder. In St. Louis he posed as a nobleman, and in this manner won and married the daughter of a prominent Missouri family. When he was discovered the young woman's brother gave him a beating, as a result of which Barrington was sent to the workhouse for six months. After he was released he was befriended by a prominent sporting man, and it is for his friend's murder that this so-called 'lord' was indicted and is now in jail. His wife has secured a divorce."

Wherefore defendant asks that this court issue its citation
574 to William Garen, Oscar Messing, alias Oscar Dane, The St. Louis Theatre Co., and Victory Bateman, commanding that they and each of them appear before this court on a day to be named, then and there to show cause, if any they have, why an attachment should not issue against them for contempt of court; that an attachment issue for all of such persons last named, and that they be punished for contempt of court; that this court make an order prohibiting the production of said play, or any play under the name of Barrington, or any play under any name dealing with any real, rumored, alleged, or pretended details of defendant life or of the alleged murder of which defendant stands accused, or any curcumstances therewith connected.

F. SEYMOUR BARRINGTON.

STATE OF MISSOURI,
County of St. Louis:

Beno Altheimer, of lawful age, being duly sworn, upon his oath says that he is the attorney of said F. Seymour Barrington, and that he has knowledge of all of the facts, matters, and things set forth in the above and foregoing application for a citation for contempt, and that all of the facts, matters, and things therein set forth are true.

BENO ALTHEIMER.

Subscribed and sworn before this 24th day of December, 1903.

F. J. HOLLOCHER,
Clerk of the Circuit Court of St. Louis County, Missouri.

[CIRCUIT COURT SEAL.]

Said application is endorsed in words and figures as follows:

"Filed Dec. 24th–03. F. J. Hollocher, clerk."

575 Which exhibits to said application for citation for contempt were in words and figures as follows, to wit:

EXHIBIT A.

Havlin's Theatre.

John H. Havlin, proprietor. Wm. Garen, manager.

Sixth and Walnut streets.

Week beginning Sunday matinee, Dec. 27. Matinees Tuesday, Thursday, Saturday.

Oscar Dane and John Winslow's "The Desperate Lord Barrington."

"Up-to-the-second" melodrama.

Produced under the personal stage direction of Mr. Oscar Dane and the management of Mr. Wm. Garen.

CAST.

Miss Victory Bateman, as	Lady Barrington.
Lord Cecil Barrington	Mr. Wm. Trainor.
Jack Barrington, his nephew	Mr. Louis J. Russell.
Milkizedek Elsenstein, a money lender	Mr. James R. Waters.
Mr. Billings, a detective	Mr. Lester De Bund.
Bell boy, in Hotel Cecil	Mr. W. Muchleisen.
Henry Rawlings, owner of factory	Mr. Wm. Carlton.
Job Withers, father of Mary	Mr. Joseph Solari.
Bill Gleason, workman	Mr. Joseph Malaski.
Dan Finegan, workman	Mr. Chas. Fawcett.
Joe Lulkin, workman	Mr. Howard J. Hall.
Biddy, a prisoner	Miss L. Leyser.
Mary Withers, a factory girl	Miss Jessie Clement.
Nancy, a nurse	Miss Dorothea Wolbert.
Grace Rawlings, an heiress	Miss Florence Leslie.
and	
Mr. Oscar Dane, as	Frederick Leymour.

Synopsis.

Act I. Laboratory of Lord Barrington. Place, Kensington, England.

576 Act II. Scene 1. Bridal apartment, Hotel Cecil, London. Scene 2. Corridor, Ludgate Prison Place, England. Scene 3. Bull ring, Ludgate Prison.

Act III. Rawlings stamping work. Place, Brooklyn, N. Y.

Act IV. Scene 1. Home of Nancy. Place, St. Louis, Mo. Scene 2. Broadway, St. Louis, Mo. Scene 3. Bonfils, near St. Louis, Mo. Scene 4. Court-house and jail at Clayton, near St. Louis, Mo.

EXHIBIT B.

"Victory Bateman and Oscar Dane, in The Desperate Lord Barrington."

EXHIBIT C.

HAVLIN'S THEATRE PROGRAMME.

Havlin's next Sunday matinee, Dec. 27th. Special matinee, New Year's (Friday). Miss Victory Bateman and Mr. Oscar Dane, in The Desperate Lord Barrington. The acme of sensational melodrama. A play filled with thrills, throbs, laughter, and tears. It quickens the pulse beats, excites the emotions, and stirs the better nature of every auditor. A play in which virtue wins and the villains get all that is coming to them. Lord Barrington—this strange man since coming into the West has been the hero of many escapades, and is now confined in the county jail on the charge of murder. In St. Louis he posed as a nobleman, and in this manner won and married the daughter of a prominent Missouri family. When he was discovered the young woman's brother gave him a beating, as a result of which Barrington was sent to the workhouse for six months.

After he was released, he was befriended by a prominent sporting man, and it is for his friend's murder that this so-called "lord" was indicted and is now in jail. His wife has secured a divorce.

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EXHIBIT D.

Wednesday—St. Louis Post Dispatch—December 23, 1903.

Havlin's
25c. mat.
To-day at 2.

Special matinee Friday—X'Mas.
The Way of the Transgressor.
See the acting dogs.

Sun. mat. Next—Victory Bateman and Oscar Dane in "The Desperate Lord Barrington."

EXHIBIT E.

The St. Louis Star, Wednesday, December 23, 1903.

Havlin's
25c. mat.
To-morrow.

Special matinee Friday—X'Mas.
The Way of the Transgressor.
See the acting dogs.

Sun. mat. Next—Victory Bateman and Oscar Dane in "The Desperate Lord Barrington."

EXHIBIT F.

The St. Louis Chronicle, Wednesday, December 23, 1903.

Havlin's
25c. mat.
To-morrow.

The Way of the Transgressor.

Special matinee Friday—X'Mas.
See the acting dogs.

Sun. mat. Next—Victory Bateman and Oscar Dane in "The Desperate Lord Barrington."

EXHIBIT G.

St. Louis Globe-Democrat, Thursday morning, December 24, 1903.

The Desperate Lord Barrington is the name of the play that will be seen at Havlin's next Sunday afternoon and for the week. It is a melodrama based on a number of exciting episodes, the last of which transpired in St. Louis. Much of the play has to do with an English setting and an English lord who is killed by his valet under dramatic circumstances. Miss Victory Bateman will head the company.

578 This week The Way of the Transgressor is at Havlin's.

Said application for citation for contempt was heard by the court on Nov. 24th, 1903, and being submitted to the court on said application and the exhibits filed therewith the court took the same under advisement until December 26th, 1903.

On Dec. 26th, 1903, said application for citation for contempt coming on for final disposition, the court ordered that the same be denied, to which order denying the same the defendant at the time then there duly excepted and still excepts, which order denying said application was in words and figures as follows, to wit:

78th day, Saturday, Dec. 26th, 1903.

STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFT.

The application of the defendant for citation against certain parties for contempt, heretofore filed herein, having been duly and fully considered, the prayer thereof is now by the court hereby denied.

On Dec. 28th, 1903, the defendant filed an additional application for citation for contempt, which application was in words and figures as follows, to wit:

STATE OF MISSOURI,
County of St. Louis, ss:

In the Circuit Court of St. Louis County, Missouri.

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON.

Now comes defendant, Frederick Seymour Barrington, and
579 state' that he here refers to his application heretofore filed on Dec. 24th, 1903, for contempt proceedings against William Garen, Oscar Messing, alias Oscar Dane, The St. Louis Theatre Co., a corporation, and Victory Bateman, and asks that said application and all the exhibits thereof be considered as a part thereof.

Defendant further states that since the court denied said application that the above-named parties in furtherance of their conspiracy to produce the play known as "The Desperate Lord Barrington," the said conspirators have caused the following advertisements of said play to be made and circulated in the city of St. Louis and in St. Louis County:

In the St. Louis Globe-Democrat, a daily newspaper, Sunday's issue, December 27th, 1903, as follows:

[St. Louis Daily Globe-Democrat, Sunday morning, December 27, 1903.]

The Desperate Lord Barrington will be given its first production at Havlin's this afternoon and week, with a matinee New Year's Day. The play is the property of Havlin and Garen, who have had it under rehearsal for a number of weeks. An attempt is being made to repeat the success of The Stain of Guilt, which was produced by the same management last season. Miss Victory Bateman will head the cast, her chief support being afforded by Oscar Dane. Both are St. Louis favorites. The play has an English setting during the earlier part of the story. "Lord Barrington" is an English electrician, who has an important experiment in hand. His valet, "Seymour," is in love with Lady Barrington, and, in order to remove her husband, he tampers with the experiment and causes the death of "Lord Barrington." He then gets possession of the fortune of the man he has killed and comes to America. The last act occurs in St. Louis, where a tragic ending is effected. The story uses a certain local episode, though the plot is for the most part fictitious.

The Night Before Christmas follows.

Havlin's
580 25 cent matinee. Thursday Tuesday, Saturday, This week The Desperate Lord Barrington. Come early. Nothing higher, and you can reserve them.

Matinee to-day. { Victory Bateman and Oscar Dane, 2 St. Louis favorites. } The Desperate Lord Barrington. } The sensation of the season. Don't miss it.

Sun. Mat. Jan. 3. The Night Before Christmas. This is another one of the big ones.

In the St. Louis Republic, a daily newspaper, Sunday's issue, December 27th, 1903, as follows:

In the St. Louis Post-Dispatch, a daily newspaper, Sunday's issue, December 27th, 1903, as follows:

[Sunday morning—St. Louis Post-Dispatch, December 27, 1903.]

The Barrington show to-day. The Barrington show goes on at Havlin's Theatre this afternoon. It is entitled "The Desperate Lord Barrington," and there is nothing that could be said of it that could be news in St. Louis, where the community is thoroughly familiar with the remarkable story of Barrington's career from the time he appeared in the guise of an English nobleman up to the time when he went into the Clayton jail, charged with murder. The company which will play the piece is headed by Oscar Dane Victory Bateman.

Havlin's. { Mat. To-day. The Way of the Transgressor.

Mat. To-morrow. Victory Bateman, Oscar Dane. The Desperate Lord Barrington.

Look out for the Desperate Lord Barrington.

That all of the newspapers mentioned in this application are dailies, and are of general circulation in the city of St. Louis and
581 St. Louis County, and throughout the United States of America.

That as a direct and natural result of said conspiracy there was printed and circulated in the city and county on Saturday, Dec. 26th, 1903, in the St. Louis Star, the St. Louis Post-Dispatch, and the St. Louis Chronicle, matters in words and figures as follows, to wit:

[Thursday the St. Louis Star, December 24, 1903.]

Havlin's Theatre will offer a new production for the coming week's attraction. It has never been shown on any stage. Something unique is promised, in The Desperate Lord Barrington. Thrills and laughter are promised, and the rehearsals that the statement will be borne out. The character of the play, the fact that it was written by St. Louis authors, and the fact that it will be produced by local favorites, with plenty of St. Louis scenery, gives additional notoriety to the piece.

Havlin's. Mat. to-day. The Way of the Transgressor.

Mat. to-morrow. Victor Bateman, Oscar Dane, } The Desperate Lord Barrington.

Look out for the Desperate Lord Barrington.

[Saturday, St. Louis Post-Dispatch, December 26, 1903.]

INJUNCTION DENIED BARRINGTON.

In the St. Louis County Circuit Court Saturday morning Judge McElhinney refused to issue citation against Wm. Garen, Oscar Dane, Victory Bateman, and the St. Louis Theatre Co. to show why they should not be held in contempt for advertising and producing the play, "The Desperate Lord Barrington," and dismissed
582 the case. The suit was brought by F. Seymour Barrington's attorneys to prevent the production of the play at Havlin's theatre Sunday and the rest of the week. In their petition the attorneys claimed that the advertising and production of the play placed those mentioned in contempt of the court, as it tended to create a prejudice against Barrington, who is to be tried next month for the murder of J. J. McCann. Attorney Steber, for the St. Louis Theatre Co., and other defendants, submitted a decision of the Supreme Court in an exactly parallel case, holding that the offense charged constituted no defense. As a result Judge McElhinney refused to issue the citations and the defendants are thereby permitted to produce the play to-morrow afternoon.

[The St. Louis Chronicle. Saturday, December 26, 1903.]

Havlin's. { Havlin's. { Mat. to-day. The Way of the Transgressor. Mat. to-morrow. Victory Bateman, Oscar Dane. { The Desperate Lord Barrington. Look out for The Desperate Lord Barrington.

Beginning with Sunday matinee and continuing all the week, with a special matinee New Year's day, Havlin's will present "The Desperate Lord Barrington," which is built from the story of the notorious bogus Lord Barrington.

Since his advent in St. Louis this mysterious man has been almost continually before the public in one way or another, and he would be a poor dramatist indeed who could not write an intensely interesting play about the situations Barrington has furnished, without drawing very largely upon the imagination. The very mystery as to whom "Barrington" really is alone is bound to make the play of interest, for we are assured that the dramatists have, to their own satisfaction, at least, solved this question. The play is full of unique
583 situations and unexpected climaxes, among which are an electrocution, a fight in jail, a mill explosion, and a unique explanation of the Bonfils tragedy.

Next: "The Night Before Christmas."

That the foregoing display advertisements were caused by said conspirators to be inserted in said newspapers and circulated in St. Louis County, St. Louis city, and throughout the United States.

That pursuant to said conspiracy, said conspirators caused said play to be acted in Havlin's Theatre in the city of St. Louis, Missouri, on Sunday, December 27th, 1903, and that in said play defendant was characterized as a villain, and made in character as a murderer of the people, and that said Messing, in acting the part of the character intended to mean this defendant, sought and tried to imitate this defendant in dialect, speech, tone, actions, and dress, which character in said play intended to represent defendant, was called Frederick Seymour, and that reputed hearsay incidents among some people of this county, State, and United States of defendant's life were produced in said play, to wit:

Bigamous marriages, muntifarious intrigues, frauds, forgeries, blacksmails, all of which were acted as the acts of this defendant, thereby slandering and defaming defendant, and none of which are true concerning defendant, but are totally false. That in said play there was the scenery of a rock quarry, which place, in the words spoken in said play, was called the rock quarry, and in said play there was an intrigue and plan between the character Seymour and others to meet at said quarry, and at said meeting at said quarry a homicide

was committed, but not by the character Seymour, but that the character Seymour exchanged hats and coats with the murderer. That the make-up of said Messing in acting the character of Sey-
584 mour was intended to be, and was like the usual appearance of this defendant in the most prominent respects. That it is the custom of people attending said theatre to hiss and jeer (rather than applaud) when the character of a villain and general villainy, if well acted, and that at and during said play at many times did the audience attending thereat most severely hiss and jeer as the character of Seymour was acted. That the dead body which the State in this case claims to be that of James P. McCann, whom defendant is charged with murdering, was found in a rock quarry in this county, near Bonfils, and that the quarry in said play was intended for the same, and was characterized as being near Bonfils, and was so advertised by the conspirators. That the State claim that the defendant was found with the hat and clothing of James P. McCann after the time at which the indictment alleges that defendant killed McCann.

That defendant has been characterized by the daily press and many of the public in this county, in St. Louis city, and throughout the United States as a bogus Lord Barrington, and said play has him acted as such after causing the death in said play of the pretended real Lord Barrington and after carrying off the intended real lord's effects.

That defendant here refers to all the evidence in the preliminary examination filed in this cause as part hereof. That the programme for and at said play to the general public at said play was as follows:

Havlin's Theatre.
Season 1903–4.
Havlin's Theatre.
Season 1903–4.
Operated by the St. Louis Theatre Co.
John H. Havlin, pres.
585 George Middleton, vice-pres.
Frank R. Tate, sec'y and treas.
Wm. Garen, manager.
Week beginning Sunday matinee, December 27th. Matinees: Tuesday, Thursday, and Saturday.
Oscar Dane and John Winslow's " up-to-the-second " melodrama
The Desperate Lord Barrington.
Produced under the personal stage direction of Mr. Oscar Dane, and the management of Mr. Wm. Garen.

Cast of Characters.

Miss Victory Bateman.....Lady Barrington
Lord Cecil Barrington.....Mr. Wm. Trainor
Jack Barrington, his nephew.....Mr. Louis J. Russell
Milkizedek Fisenstein, a money lender.....Mr. James R. Waters
Mr. Billings, a detective.....Mr. Lester De Bund

Bell boy in Hotel Cecil.....Mr. W. Muchleisen
Henry Rawlings, owner of factory.....Mr. W. Carlton
Job Withers, father of Mary.....Mr. Joseph Solari
Bill Gleason, workman.....Mr. Joseph Malaski
Dan Finnegan, workman.....Mr. Charles Fawcett
Joe Lulkin, workman.....Mr. Howard J. Hall
Biddy, a prisoner.....Miss L. Leyser
Mary Withers, a factory girl.....Miss Jessie Clement
Nancy, a nurse.....Miss Dorothea Wolbert
Grace Rawlings, an heiress.....Miss Florence Leslie

and

Mr. Oscar Dane, as.....Frederick Seymour
Laborers, prisoners, guards, ladies, gentlemen, etc., etc.

Synopsis of scenes.

Act I. Laboratory of Lord Barrington. Place, Kensington, England. Time, 1895. "Slowly the web weaves and surely I will own her soul and body."

Act II. Scene 1. Bridal apartments, Hotel Cecil, London. 586 Time, one year later. "A wife in name only." Scene 2. Corridor Ludgate Prison. Place, England. Time, one month later. "I can wait." Scene 3. Bull ring Ludgate prison. Time, the same day. The brand of Cain.

Act III. Rawling's Stamping Works. Place, Brooklyn, N. Y. Time, seven years later. Give the workman justice and he won't need your charity.

Act IV. Scene 1. Home of Nancy. Place, St. Louis, Mo. Time, the following month. "And for every lie that you have whispered into a woman's ear you shall answer to a God above." Scene 2. Broadway, St. Louis, Mo. Time, the next day. "I will do it for a kiss." Scene 3. Bonfils, near St. Louis, Mo. Time, September, 1903. Solving the great McCann mystery. Scene 4. Court house and jail at Clayton, Missouri, near St. Louis, Missouri. Time, March, 1904. "The light of love and hope rekindled."

Executive staff.

Manager, Wm. Garen.
Business manager, Joseph Mattfield.
Stage director, Oscar Dane.
Electrician, L. Wilson.
Properties, U. Hunt.
Stage carpenter, Teddy Pipper.

That in said play defendant is characterized as a prisoner and as knocking down guards and escaping, and thereafter is characterized as an escaped convict guilty of many crimes involving moral turpitude.

That in said play defendant is characterized as a prisoner in the Clayton, Mo., jail awaiting trial for a homicide, which jail is fully shown in one of the scenes of said play. That during said
587 play the following pamphlet was sold to the general public, to wit:

"The desperate Lord Barrington—Songs and jokes and the latest parodies. Sung by James R. Waters—The eminent Hebrew impersonator and singer in his new big success part as Malchizedek. Eisenstein, The money lender—Price twenty-five cents."

(The said pamphlet containing no other matter concerning defendant or said play, but being the mere compilation of irrelevant songs and jokes.)

That as a direct consequence of said conspiracy, and as a natural consequence thereof, the following article appeared in the St. Louis Republic and was circulated in St. Louis, city of St. Louis, and throughout the United States, to wit:

The said play was acted before the general public, who attended said theatre in great numbers and who paid admission fees for the purpose of seeing said play. That conspirators intend and threaten to continue playing and advertising said play in St. Louis every night, and also on New Year's for the remainder of the present week, and then to produce said play and advertise the same in other cities in the State of Missouri and throughout the United States.

Wherefore defendant asks that said William Garen, The St. Louis Theatre Co., a corporation, Oscar Messing, alias Oscar Dane, and Victory Bateman be cited to appear before this court to show cause why they should not be punished for contempt of court.

F. SEYMOUR BARRINGTON, *Defendant.*

STATE OF MISSOURI,
County of St. Louis, ss:

Beno Altheimer, being duly sworn upon his oath, says that
588 he is the attorney of defendant Frederick Seymour Barrington, and that he has personal knowledge of matters alleged in the foregoing application, and that all of the facts, matters, and things therein set forth are true.

BENO ALTHEIMER.

Subscribed and sworn to before me this the 28th day of Dec., 1903.

[SEAL CIRCUIT COURT.] F. J. HOLLOCHER,
Clerk Circuit Ct., St. Louis Co.

Which application was indorsed as follows: "Filed Dec. 28th, 1903. F. J. Hollocher, clerk.

On December 28th, 1903, the said second application for citation for contempt coming on to be heard, the State appearing by the pros. attorney, R. L. Johnston, and the defendant appearing by his attorneys only, and the same being submitted to the court upon said application and the former application and exhibits thereto, the court ordered that said application be denied, to which order the

defendant at the time duly excepted and still excepts; which order overruling said second application was entered upon the record in words and figures as follows, to wit:

Seventy-ninth day. Monday, December 28th, 1903.

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON.

Comes now again at this day the prosecuting attorney, for and on behalf of the State, and comes also said defendant, by his counsel, and files and submits to the court his application for a citation for contempt against William Garen, Oscar Messing, alias Oscar
589 Dane, the St. Louis Theatre Company, a corporation, and Victory Bateman; and the court having duly and fully considered said application, and being fully advised in the premises, doth now hereby deny the prayer thereof.

On January 7th, 1904, and during said September term, 1903, of said court, the defendant filed his application for a change of venue, which application was in words and figures as follows, to wit:

STATE OF MISSOURI,
County of St. Louis, ss.

In the Circuit Court, county of St. Louis, State of Missouri. September term, 1903.

STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT. } No. 9215.

Now comes the defendant, Frederick Seymour Barrington, and first duly sworn, on his oath says that he is the defendant in the above-entitled cause, and that the minds of the inhabitants of the entire thirteenth judicial circuit of the State of Missouri, and of St. Louis County, in the State of Missouri, in which the above-entitled cause is pending, are so prejudiced against him, the defendant, that a fair trial of the said cause can not be had in said circuit and county.

Defendant further states that he is a native of the Empire of Great Britain and is a native subject of the King of Great Britain and Emperor of India; that defendant was born of English parents, who were citizens and subjects of the King of Great Britain and Emperor of India, they having been born in England; that defendant was born of English parents in Barrackpore, near Calcutta, Presidency of Bengal, British East India. Defendant states that he has never changed his natural citizenship, nor renounced his allegiance to said

King, Emperor, or Government of Great Britain; that defend-
590 ant, as such citizen and subject as aforesaid, is entitled, under and by virtue of the treaties now existing between the Government of the United States and the said King, Emperor, and the Government of Great Britain, as well as under the laws and Constitution of the Federal Government, and also under the laws of nations, to a fair and impartial trial of said cause; that said defendant can not have a fair and impartial trial in said circuit court, and that under said treaties, laws, laws of nations, and constitutional rights, as well as under the laws of this State, defendant is entitled to a removal of this cause to some other circuit and county, and is entitled to a full and complete hearing of evidence to prove such prejudice; that the clause in sec. 2576 of the Revised Statutes of Missouri, 1899, providing that "the court or judge in vacation shall fix the number of witnesses for which the State or county shall be liable" in the hearing of an application for a change of venue, is unconstitutional and void, in that it violates the laws of nations, the statutes aforesaid, the Federal Constitution and the 14th amendment thereof, and the constitution of the State of Missouri; that said clause also violates sections 10, 22, 28, 30, and 32 of article 2 of the constitution of the State of Missouri.

Wherefore defendant asks that he be granted a change of venue of said case, and that this cause be sent to some other county and circuit in this State where the prejudice aforesaid does not exist and where a fair and impartial trial of said cause may be had. And defendant asks that the time for the hearing of this application for continuance be fixed by the court, and that the court order that defendant be not limited in the number of witnesses which shall be subpœnaed in this behalf in the hearing of this application, and further order that the defendant be allowed to subpœna as many witnesses as he may have, to prove said prejudice; and that the court order
591 that the number of witnesses for which the State or county will be made liable to prove said prejudice be not limited so far as the defense is concerned.

FREDERICK SEYMOUR BARRINGTON.

Subscribed and sworn to before me, this 7th day of January, 1904.

[SEAL CIRCUIT COURT.] F. J. HOLLOCHER, *Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss:

Frederick Seymour Barrington, of lawful age, being duly sworn, upon his oath states that he is the defendant in the above-entitled cause, and that all the facts, matters, and things set forth in the above and foregoing petition for a change of venue are true.

F. SEYMOUR BARRINGTON.

Subscribed and sworn to before me on this the 7th day of January, 1904.

[SEAL OF CIRCUIT COURT.] F. J. HOLLOCHER, *Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss:

Philip H. Sebastian, being duly sworn, upon his oath says that he is a resident and citizen of the county of St. Louis and State of Missouri, and that he is disinterested in the cause now pending in the circuit court of St. Louis County, Missouri, entitled the State of Missouri vs. Frederick Seymour Barrington, wherein the said Barrington is charged with the murder of one James P. McCann; that the minds of the inhabitants of the entire thirteenth judicial circuit of the State of Missouri, in which said cause is pend-
592 ing, are so prejudiced against said Barrington that a fair trial of said cause can not be had in said circuit and county, and that the defendant ought to have a change of venue of said cause, and that the same should be sent to some other county and circuit on account of said prejudice; that the affidavit is made in support of the petition of the defendant in said cause for a change of venue.

PHILIP H. SEBASTIAN.

Subscribed and sworn to before me, the undersigned notary public in and for St. Louis County, Missouri, on this 22nd day of December, 1903. My commission as notary public expires on the 22 day of January, 1904.

Witness my hand and notarial seal hereto set and affixed, in St. Louis County, Missouri, on this the 22 day of December, 1903.

[SEAL.] WM. DOERGES, *Notary Public.*

STATE OF MISSOURI,
City of St. Louis, ss:

Robert H. Early, being duly sworn upon his oath, says that he is a resident and citizen of the county of St. Louis and State of Missouri and that he is disinterested in the cause now pending in the Circuit Court of St. Louis County, Missouri, entitled the State of Missouri vs. Frederick Seymour Barrington, wherein the said Barrington is charged with the murder of one James P. McCann; that the minds of the inhabitants of the entire thirteenth judicial circuit of the State of Missouri, in which said cause is pending, are so prejudiced against said Barrington that a fair trial of said cause
593 cannot be had in said circuit and county, and that the defendant ought to have a change of venue of said cause, and that the same should be sent to some other county and circuit on account of said prejudice. That the affidavit is made in support of the petition of the defendant in said cause for a change of venue.

ROBERT H. EARLY.

Subscribed and sworn to before me, the undersigned, notary public in and for the city of St. Louis, Missouri, on this the 22 day of December, 1903.

My commission as notary public expires on the 18th day of September, 1906.

Witness my hand and notarial seal hereto set and affixed, in the city of St. Louis, Missouri, on this the 22 day of December, 1903.

[SEAL.] JENNIE JUEHNE,
Notary Public, City of St. Louis, Missouri.

Said application for change of venue is endorsed:
"Filed Jany. 7th, '04. F. J. Hollocher, clerk."

* * * * * * *

596 On January 25th, 1904, in the said circuit court, the said matter of change of venue came again before said court.

Whereupon the said court denied the defendant's said application for a change of venue, and overruled the same, and refused to grant defendant a change of venue.

To which action and decision of the court the defendant then and there duly excepted and still excepts.

Which order denying and overruling defendant's application for a change of venue was entered upon the record of said court in words and figures as follows, to wit:

MONDAY, *January 25th, 1904.*

THE STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Comes now at this day the prosecuting attorney for and on behalf of the State, and the said defendant is brought into court and appears in his own proper person, as well as by his counsel, and the application of said defendant for change of venue having been heretofore submitted to the court upon all the evidence and proofs adduced
597 on behalf of the State and defendant; and the court having seen and heard the same, and being now fully advised in the premises, doth find the issue herein joined on said application for change of venue in favor of the State of Missouri and against said defendant, and doth accordingly deny the said application. Ordered by the court, of its own motion, that this cause be, and hereby is, reset for trial for Tuesday, February 23rd, 1904.

Also on the following days the following proceedings were had, to wit:

Appearances: R. L. Johnston, A. E. L. Gardner, and Albert Davis, attorneys for plaintiff.

Shelley Grover and Wilford Jones, attorneys for defendant.

TUESDAY, *February 23rd, 1904.*

Mr. GROVER. Let the record show that defendant's motion to quash the special venire, because the order was not made therefor in the presence of the defendant, was by the court refused.

Which motion was in words and figures as follows, to wit:

In the Circuit Court of the County of St. Louis, State of Missouri. January term, 1904.

STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Motion to quash special venire.

Now comes defendant and moves the court to quash the special venire now returned in this cause and court for the reason that the same was ordered by the court in the absence of defendant and his counsel.

SHELLEY GROVER,
WILFRED JONES,
Attys. for Deft.

598 Said motion was on said day by the court overruled, to which action of the court the defendant then and there excepted.

On last-named day defendant filed his challenge to the array of jurors in words and figures as follows, to wit:

In the Circuit Court of St. Louis County, State of Missouri. January term, 1904.

STATE OF MISSOURI, PLFF.,
VS.
FREDERICK SEYMOUR BARRINGTON, DEFT.

Challenge to the array of special jurors.

Comes defendant and makes this challenge to the array of special jurors summoned in this cause, for the reason that the judicial order therefor was made without the presence of the defendant or his counsel.

SHELLEY GROVER,
WILFRED JONES,
Attys. for Deft.

Which challenge was by the court overruled and to which action of the court in overruling the same the defendant then and there duly excepted.

The said special venire and the return is in words and figures, as follows, to wit:

COUNTY OF ST. LOUIS, *sct.*
The State of Missouri, to the sheriff of St. Louis County, greeting:

We command you to summon seventy-six good and lawful men of the county of St. Louis, to appear in the circuit court of Saint Louis County, at the court-house in Clayton, county of Saint Louis, on the 23rd day of February, 1904, at 9.30 a. m., then and there to serve as special jurors in the case of State of Missouri, plaintiff,
599 against Frederick Seymour Barrington, defendant, and have you then and there this writ with the names of said jurors endorsed thereon.

Witness, F. J. Hollocher, clerk of said court, with the seal of said court hereto affixed, this 8th day of Feby., 1904.

[SEAL.] F. J. HOLLOCHER, *Clerk.*

Executed the within venire in the county of St. Louis, Missouri, by summoning seventy-six good and lawful men of the county of St. Louis, Missouri, as jurors as commanded, to wit:

1. Henry Bopp,
2. Charles Van Horn,
3. Clarence Campbell,
4. G. W. Sallee,
5. G. W. Gimbel,
6. Herman Rosenkoetter,
7. H. C. Hoffmann,
8. Lewis Meyer,
9. Peter Bernard,
10. George Lehman,
11. Joseph Lindemann,
12. William Buller,
13. John Auffenberg,
14. James Sutton,
15. Louis Dependahl,
16. Louis M. Heim,
17. Henry Schollmeyer,
18. Oscar Linss,
19. S. E. Smith,
20. George Besancenez,
21. Jacob Schumacher,
22. John L. Starnage,

600 23. Charles Barbee,

24. August Lane,
25. F. J. Killalee,
26. William La Flam,
27. Emil Poertner,
28. Henry P. Aff,
29. E. L. Ruewwe,
30. Charles Eggert,
31. Charles Kopp,
32. Charles Harwood,
33. R. P. Moll,
34. Erastus Smith,
35. John Behle,
36. Joseph Wetterer,
37. David Beach,
38. Herman Toelle,
39. E. Schottlander,
40. George Koebel,
41. W. H. Idecker,
42. John Rasch,
43. William Krumrey,
44. Charles Dielmann,
45. John Gollhofer,
46. James McMahon,
47. W. S. Love,
48. Charles Moreau,
49. Henry Kamp,
50. W. H. Lamb,
51. John S. Kolbe,
52. Henry Marten,
53. Louis Hardt,
54. George Kern,
55. Adolph Litzsinger,

601 56. W. E. Brockmann,

57. Henry Kaufmann,
58. William Lenz,
59. Charles Larsen,
60. Frank C. Bryce,
61. Henry Koebel,
62. Ulrich Muessmeyer,
63. George Eschenbriner,
64. Frank Schaeffer,
65. William Bolte,
66. John Meier,
67. C. A. Schrader,
68. Joseph Froesel,
69. A. N. Winthers,
70. Charles Schueler,
71. L. F. Vollmer,
72. Edward Vogt,
73. Edward Lehmann,
74. John W. Eckels,
75. Adolph Litzsinger, sr.,
76. Charles Schueller, jr.

EDMUND C. HENCKEN, *Sheriff.*
By JOHN W. BELLAIRS, *Deputy.*

* * * * * * *

976 Mr. JOHN A. FINAN, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.
A. John A. Finan.
Q. Mr. Finan, what is your occupation?
A. I am connected with the St. Louis police department.
Q. City of St. Louis?
A. Yes, sir.
Q. Were you so connected in the month of June of last year?
A. Yes, sir.

977 Q. I will ask you if you ever saw the defendant, Frederick Seymour Barrington?
A. Yes, sir.
Q. Where was the first place?
A. In our office at the Four Courts in St. Louis.
Q. What was the occasion of his being there at your office?
A. Well, I saw him on two occasions. First, he was in there with Officers Smith and James and I saw him brought in later on the night of the 27th, in the——
Q. Did you know anything about the location of the defendant's trunk?
A. Yes, sir.
Q. What do you know about that?
A. I located it on Saturday, June 27th, at the Union Station.
Q. What place at the Union Station?
A. In the baggage room.
Mr. GROVER. We object to introduction of evidence of this trunk.
Q. How do you know that it was the defendant's trunk?
Mr. GROVER. We object to that even if it was defendant's trunk. I want it to be connected with the McCann residence.
COURT. Can you follow it?
Mr. JOHNSTON. We can.
COURT. You may ask him.
(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)
Q. Where was it you located it?
A. At Union Station.
Q. What sort of a trunk was it you located there?
A. A very large trunk. It had the initials "F. S. B." on the end of it.
Q. Would you know that trunk if it was shown to you?
A. Yes, sir.
Mr. GROVER. I wish to object to the competency of this evidence.

978 COURT. What is the purpose of it?
Mr. JOHNSTON. I propose to ask him what was found in the trunk. He was present at the time it was opened.

Mr. GROVER. We object to the trunk and everything in it as inadmissible, for the reason it was taken without due process of law and seized for that purpose. I would like to examine the witness in reference to that.

COURT. You may examine him in reference to it.

Cross-examination by Mr. GROVER:

Q. Mr. Finan, this trunk that you are going to identify, you found that down at the union station?

A. Yes, sir.

Q. Where was Barrington when you found it?

A. At the time we found it Barington was at our office in the Four Courts.

Q. Under arrest?

A. Yes, sir.

Q. And he was being held there when you went down to locate the trunk?

A. No, sir; he didn't know anything about locating the trunk.

Q. That was the fact; he was held for the murder while you were locating the trunk?

A. Yes, sir. While he was at our office I was detailed on the case to locate the trunk about 7 o'clock in the afternoon, and I traced the trunk to the baggage man at the union station, and I went there and brought the colored expressman with me.

Q. Now, you went down there then to the union station and found the trunk?

A. Yes, sir.

Q. And when you found it Barrington was under arrest?

A. Yes, sir.

Q. Or the trunk check?

A. The trunk was not checked.

Q. Did it have a stay ticket upon it?

A. It had a check of this colored expressman.

Q. It had the check of the colored expressman?

A. Yes, sir; the expressman's check.

979 Q. Do you know where the check was that corresponded with the check that was on the trunk?

A. No, sir.

Q. Did you have it?

A. No, sir.

Q. And so you got this trunk at the depot without any check?

A. I got it from the baggage agent upon my receipt.

Q. You took it, then, without getting consent from the defendant?

A. No. We didn't think it was necessary to get consent from him.

Q. You didn't have any search warrant?

A. Didn't need any search warrant.

Q. (COURT.) Answer the question.

A. No, sir; I did not.

Q. And so you took the trunk out of the station without any writ or process of law?

A. No writ whatever.
Q. You took it out of the station?
A. Yes, sir.
Q. And then you carried it up to the Four Courts?
A. Called the wagon and sent it to the Four Courts.
Q. And then did you open it?
A. No, sir.
Q. Did you see it opened?
A. Yes, sir.

Mr. GROVER. We object to his evidence upon the ground that it was taken without due process of law—taken in violation of the State constitution, which prohibits the making of a man a witness against himself—and was taken without the voluntary consent of the defendant.

COURT. If you can identify it as the defendant's.

Mr. JOHNSTON. I simply want him to identify the articles that were taken from this trunk—he saw them taken out—and to prove that they were the articles of the defendant.

Mr. GROVER. Suppose you can't show that?

Mr. JOHNSTON. I will withdraw Mr. Finan for a few moments.

(Witness withdrawn.)

980 Mr. JOHN MORRIS, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. What is your name?
A. John Morris.
Q. Where do you live, John?
A. 910 North Compton.
Q. And what is your business?
A. Express.
Q. Did you have occasion to get a trunk at the Leland Hotel some time in June of last year?
A. Yes, sir.
Q. On whose order did you go and get that trunk?
A. For Mr. Barrington.
Q. Is that the gentleman sitting back of his counsel?
A. Yes, sir.
Q. Where did he come and see you?
A. He came to the corner of the alley and called me. I was standing down on the sidewalk.
Q. How far is your office located from the Leland Hotel?
A. Two blocks.
Q. When he called for you do you remember about what day it was?
A. Not exactly; no, sir.
Q. Do you remember the date of the month or the day?
A. No, I do not.
Q. Where did you go?

A. 2901 Franklin avenue.
Q. Is that the Leland Hotel?
A. Yes, sir; right there on the corner.
Q. What did you do with that trunk after you got it?
A. Took it to the Union Station.
Q. What did he tell you to do with the trunk when you got it?
Mr. GROVER. We object to that as irrelevant and immaterial.
COURT. Objection overruled.
(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)
981 Q. What, if anything, did Barrington tell you to do with the trunk when you got it?
A. He met me at the corner of the alley and said "Will you haul a trunk for me?" I said I would. "Have you any checks?" he said. I said "Yes, sir." "Give me a check; how much do you charge?" he said. I told him 75¢. He gave me a dollar and I gave him a quarter, and he took the check on his trunk. He took one and I took the other and when I got to the house he had the trunk on the front steps and I took it on my back and put it on the wagon, and he told me "Now, don't tell anyone where you are taking this trunk."
Mr. GROVER. We object.
COURT. Objection overruled.
(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)
A. He told me to take it to the Union Station.
Q. That was nothing but a claim check?
A. No, sir.
Q. What did you do with the trunk?
A. I put it in the Union Station, as I do all of them.
Q. And that is all you did in that connection?
A. Yes, sir.
Q. Would you recognize that trunk if you would see it now?
A. Yes, sir.
Mr. GROVER. We object. The foundation has not been laid by the State for the identification of this trunk. I object on account of its irrelevancy and immateriality. I don't think they have laid the proper foundation.
COURT. You don't fix the time.
Mr. JOHNSTON. We can do this by other witnesses.
Q. What do you say as to the point of time now? Do you remember about that time of hearing anything about one James P. McCann being missing?
A. No, sir.
982 Mr. GROVER. We object.
COURT. Objection sustained.
Q. Did you afterwards, after taking this trunk down, have occasion to be called to the Four Courts?
A. Yes, sir; the same night.

Q. Who did you see down there?

Mr. GROVER. We object to that as leading.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

A. Mr. Barrington.

Q. You saw Mr. Barrington?

A. Yes, sir.

Q. And this was the same night that you had hauled the trunk to the station?

A. Yes, sir.

Mr. JOHNSTON. I submit that it is competent now.

Mr. GROVER. I make the same objection as made before.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Mr. GROVER. I ask the privilege of cross-examining the witness now as to the marks of identification by which he would know the trunk, if any.

Q. (COURT.) How can you identify it?

A. In the first place, there is a little piece of strip off the bottom. I don't know whether the nails are loose on it.

Mr. GROVER. We object.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

983 Q. (COURT.) Anything else by which you can identify it?

A. When I identified it at the station it had my check on it and I know the check.

Q. (COURT.) Bring in the trunk.

Q. Do you recognize the trunk?

A. Yes, sir. There is the strip that is cracked there.

Mr. GROVER. I object to this on the ground that a sufficient foundation has not been laid.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Were you there when the trunk was opened?

A. No, sir.

Q. That is all, John.

Cross-examination by Mr. GROVER:

Q. How long were you at the Four Courts that night?

A. Well, I guess I waited there about an hour.

Q. About an hour at the Four Courts?

A. Yes, sir.

Q. And this trunk was brought up there then?

A. It wasn't there when I got there.

Q. It was brought up there after you were there?
A. No, sir.
Q. You didn't see this trunk at the Four Courts?
A. No, sir; I never saw it after.
Q. You never saw it after it was at the Union Station until now?
A. No, sir.
Q. Do you haul a great many trunks?
A. Yes, sir.
Q. How did you come to remember that little broken place there?
A. I hauled a lot of trunks that day, but that was the only one I took to the station that day.
Q. Haven't you a good many trunks broken that way?
A. Yes, sir. I told the detective before I left the house. I described it to him.
984 Q. You didn't go down there when he got this trunk?
A. Yes, sir; I went down to the station with him.
Q. And picked it out?
A. Yes, sir.
Q. When you picked the trunk out did you examine as to this broken place?
A. Yes, sir.
Q. When was the first time you saw this broken place?
A. When I put it up in my wagon in front of the hotel.

Redirect examination by Mr. JOHNSTON:

Q. Who was the detective that you told how he could find the trunk?
A. I don't know, but I think he is out there. He was a few moments ago. I think Tom was his name—I don't know.
Mr. GROVER. We object.
Q. (COURT.) Did you point this trunk out to the detective?
A. Yes, sir.
Q. (COURT.) Can you identify the detective?
A. Yes, sir; he is out there now.
Q. (COURT.) What is his name?
A. I don't know his name.
Mr. GROVER. Then we object.
COURT. Objection overruled.
Q. Mr. Morris, is this the gentleman here?
A. Yes, sir.
Q. John Finan?
A. Yes, sir. I don't know his name, but that is the gentleman.

Mr. JOHN FINAN, being recalled on the part of the State, testified further as follows:

Direct examination by Mr. JOHNSTON:

Q. I will ask you if there are any marks of identification on
985 this trunk by which you can identify this as the trunk you got at Union Station that night?

A. Yes, sir; that is my name in full on the bottom here.

Q. Who showed you where that trunk was?

Mr. GROVER. We object. That is a matter between parties outside of this defendant and hearsay.

Q. Who pointed out this trunk?

A. This colored gentleman.

COURT. Objection overruled.

(To which action and ruling of the court, defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. When he pointed out the trunk what did you do?

Mr. GROVER. We object to that for the same reason.

COURT. Objection overruled and exception saved.

A. Called a wagon from the Four Courts and sent it to our office.

Q. How long afterwards was it before you saw the trunk again?

A. I went right with it and never left it.

Q. Saw the trunk when it was opened?

A. Yes, sir.

Q. Who opened it?

A. Mr. Barrington.

Q. That is the defendant?

A. Yes, sir.

Q. Who was present at the time that it was opened?

A. There was myself, Chief Desmond, Mr. Salkeld, of the Republic. There must have been a dozen or so in the room; detectives and one thing and another, and Mr. Barrington.

Q. What, if anything, was taken from the trunk, if you noticed, that evening.

Mr. GROVER. We object until they lay sufficient foundation. If you are introducing matters of confession of account of that trunk that was opened in the presence of defendant, we object to it. We also object to the contents of the trunk.

COURT. Objection overruled.

986 (To which action and ruling of the court, defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Can you recall any articles taken from the trunk that you can identify?

A. Yes, sir.

Q. Name some of them.

A. A revolver.

Q. Would you recognize the revolver?

A. Yes, sir.

Q. I show you now a revolver and ask you if that is the revolver?

Mr. GROVER. We object to that for the same reason.

COURT. Objection overruled.

(To which action and ruling of the court, defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. How do you recognize that as the revolver taken from that trunk?

A. It is marked "E" on the side and from the three marks here and from the No. 5634.

Q. Which number you took down that night?

A. And my name is on there, too.

Q. Your name "Finan" is also outlined on it?

A. Yes, sir.

Q. Any other article?

A. A walking stick.

Q. Did you make any marks on it by which you can identify it?

A. Right here.

Q. Your mark is on that?

A. Yes, sir.

Q. You recognize that as the gun taken from the trunk that night?

A. Yes, sir.

Q. Anything else that you recollect?

A. Well, there were a lot of pictures, a lot of underwear, and a slouch hat that is on the fedora order.

Mr. GROVER. We object.

COURT. Yes.

Q. Did you make any mark of that hat?

987 COURT. What do you want with the hat?

Mr. JOHNSTON. We have shown he was wearing, on the night of the alleged murder, a black fedora hat. It is part of the res gestae. We have shown that he had a black fedora hat on the car.

COURT. Do you intend to offer any other evidence to connect this hat with the alleged murder?

Mr. JOHNSTON. Nothing further than that on the night which the alleged murder was committed and he came into the Leland Hotel with a black fedora hat on, and the testimony is that he had a hat on of that character. Well, I don't insist upon it if the court thinks it is not proper.

Mr. GROVER. We object to the action of the prosecuting attorney in exhibiting these things and failing to get them in here, which is improper conduct on the part of the State's attorney.

COURT. Objection sustained as to the hat.

Q. Do you remember any other articles that you can recollect at the time?

A. There was a lot of underwear and books and different things that were taken out and put on the floor.

Q. What statement, if anything—any voluntary statement—was it that Barrington made at that time?

Mr. GROVER. We object.

Q. Did the defendant make any statement at that time?

A. He made so many statements I don't know which one you want. He made statements; yes.

Q. COURT. Under what circumstances were they made? Describe who was present at the time.

A. Well, Mr. Barrington, myself, and Detective Smith and Greeley were taking things out of the trunk, and as they came out of the trunk we would comment on different things—these are only underwear—and we would take out things and put them back.

988 Q. Anything he said, was it in response to questions?

Mr. GROVER. We object.

COURT. Well, I will excuse the jury until 7 o'clock and hear this testimony.

(Jury removed.)

The court thereupon proceeded to hear testimony, without the presence of the jury, as to alleged statements, admissions, and confessions of the defendant to determine as to the admissibility of the same in evidence, as follows:

989 COURT. Well, I will excuse the jury until 7 o'clock and hear this testimony.

(Jury removed.)

The court thereupon proceeded to hear testimony, without the presence of the jury, asks alleged statements, admissions and confessions of the defendant to determine as to admissibility of the same in evidence, as follows:

Q. Now, Mr. Finan, you said that there were certain statements made by the defendant Barrington on this occasion in Chief Desmond's office. What, if anything, was said? Detail what statements he made.

A. Well, in opening up the trunk the only statements he was making at that time was, as we were taking out the clothes, pictures and the different things we came to the gun, and asked him where he got that. He said he got that from Mr. McCann.

Q. Did he say when or where?

A. He didn't say when or where. He didn't state that at all. We were just talking to ourselves. He sat with his head down over the trunk—we were just joshing and fooling as we were taking them out.

Q. Just talking casually among yourselves?

A. Yes.

Q. And other statements you recollect regarding any of the articles?

A. Not that I can recollect right now.

Q. Anything said about the revolver?

A. He said that Mr. McCann had given him the revolver. He didn't state when or where.

Q. Was anything said about his leaving or where he was going?

A. No. I asked him where they westbound and he didn't answer me. I asked him where the trunk was checked to, and he would't answer me.

Q. He then remained silent or answered nothing?

A. He remained silent I suppose, he wouldn't answer me.

Q. At that time was anything asked about James P. McCann?

A. Yes. Mr. Desmond asked him several times where Mr. McCann was and he would always state that he didn't know. We
990 heard only that he was out with him one night and he says they got into a fight out along the Suburban Park and he didn't know what to think of it.

Q. How often did he make that statement?

(COURT). What I want to know is whether these statements were voluntary or not, he being under arrest?

A. Mr. Desmond asked him and he even stated—Mr. Desmond says "Haven't I always been kind to you and friendly to you?" and he says "Yes, you have; you have always been friendly to me." His conversation was always voluntary. He took him in his office and he spoke every once in a while, and Mr. Desmond spoke every once in a while to him. They seemed to be very friendly together when they were talking on this question.

Q. Was there any warrant for his arrest at that time—any information issued against him?

A. Not as I know of.

Q. He was under arrest—four o'clock in the afternoon?

A. He was under arrest, but there was no information at the time. He was arrested under suspicion of this murder at the time and locked up.

Q. Were the statements made in response to questions or in the nature of conversation?

A. In response to Mr. Desmond. He would ask him questions, and those were answers he would give him.

Q. Was there anything said by Desmond as to what he would do for him if he would answer—any promises?

A. No, sir.

Q. Any condition offered him?

A. No, sir. Desmond was nice to him all the time, and all he wanted was the truth told him, and he wanted things straightened up and come out with the truth—offered him no leniency or threatened him in no way.

Q. No inducement was held out to him by any detective—chief or anyone?

A. No, sir.

Cross-examination by Mr. GROVER:

991 Q. Mr. Finan, what time was it that this took place—this talk of alleged confession?

A. When he was brought to our office about—possibly it was about 8 o'clock.

Q. About 8 o'clock?

A. Yes, sir.

Q. And the trunk was there then?

A. No, sir; the trunk wasn't there.

Q. Eight o'clock in the evening?

A. No, sir.

Q. What time did he find the trunk?

A. I had gone out at noon before Mr. Barrington came to our office, and I had learned that the trunk was taken away from there by a colored expressman. I met the private watchman what was patrolling that beat, and I asked him, "Do you know of any expressman around here would haul a trunk?" He says yes, there were several in the neighborhood, and I made inquiries——

Q. Here is what I am getting at. The trunk was brought in there after this business took place in reference to this confession of Barrington's?

A. I wasn't there at the time before this trunk.

Q. You weren't there before the trunk?

A. As I came there Mr. Barrington had just come down to the office, and I went out there on this trunk right away. I had been out on it and came to the office. I told the man if he located this man to telephone me. He told me he had located this man Morris, and I was sent out to get the trunk.

Q. And when you were out getting the trunk Barrington was at the station?

A. No, sir.

Q. And anything that happened before that you don't know anything about it?

A. No, sir.

Q. So what inducements may have been held out or pressure brought to bear on him you know nothing about?

A. No, sir.

992 Q. You left the station and went away, and when you came back Barrington was still there, wasn't he?

A. I wasn't gone more than fifteen minutes.

Q. Barrington was still there?

A. Yes, sir.

Q. This was the second arrest?

A. This was the second arrest.

Q. And you don't know what had taken place?

A. No, sir.

Mr. JOSEPH D. SALKELD, being duly sworn on the part of the State, testified as follows:

Direct*ion* examination by Mr. GARDNER:

Q. What is your name?

A. Joseph D. Salkeld.

Q. What is your business, Mr. Salkeld?

A. Police reporter for the Republic at the Four Courts.

Q. What were you engaged in during the month of June, 1903?

A. I was at the Four Courts for the Republic.

Q. You were on the Republic, were you, at that time?

A. Yes, sir.

Q. And you recognize Mr. Barrington, do you?

A. Yes, sir.

Q. You remember the occasion of this trunk being in there?

A. Yes, sir.

Q. And the time of Mr. Barrington being brought there under arrest, as they charge?

A. Yes, sir.

Q. Were you there when they brought him in?

A. Yes, sir.

Q. Do you know Mr. Finan, the witness who was on the stand?

A. Yes, sir.

Q. Were you there from the time Mr. Barrington was brought in?

A. I was in and out to the telephone, but I wasn't out of the room any time more than five or ten minutes. You mean after
993 the trunk was brought in?

Q. No. From the time Mr. Barrington was brought in until Mr. Finan came back—were you there during the time, you remember, when Mr. Barrington was brought in?

A. Yes, sir.

Q. Do you remember who brought him in?

A. He was brought from the mounted district.

Q. How long did you remain with him after he was brought there, approximately?

A. I don't remember exactly. I wasn't away any lenth of time. He was held at the mounted district till eight o'clock in the evening.

Q. You were there, were you, in the room?

A. Yes, sir; Chief Desmond's office.

Q. You remember when it was brought in, do you?

A. Yes, sir.

Q. You were in Chief Desmond's office then?

A. Yes, sir.

Q. How long did you remain in there?

A. I was there until pretty near midnight.

Q. When Barrington was first brought in, how long were you there before you left him even for a moment?

A. Half an hour.

Q. During that time when he was first brought in there I will just get you to state in a general way as to whether anyone in authority there made any effort to get Mr. Barrington to make any confession or admissions about this crime that he was charged with?

Mr. GROVER. We object to that for the same reason. He says he wasn't in there all the time.

Mr. JOHNSTON. He says he was there constantly while he was in there. He can state what was said while he was in there.

A. Not at any time while I was in that room from the time Mr. Barrington was brought in there until I left at nearly midnight.

994 Was there anything said in the way of any promise or anything offered him if he would make a confession?

Q. Any threats?

A. No threats. If I am permitted to say it, I know nothing of that kind of work is done at the Four Courts at all.

Q. No threats or violence of any kind?

A. No, sir.

Q. On the contrary, was any statement made by Mr. Desmond or his men there?

A. I don't know what the men might have said, but I know Mr. Desmond——

Q. You remember when Mr. Finan came in with the trunk? You were there all the time until he came there with the trunk?

Mr. GROVER. We object. He hasn't said that.

Q. Do you remember when Mr. Finan left for the trunk?

A. Yes, sir.

Q. Were you out of that room until he came back?

A. I couldn't tell you that.

Q. You were in and out there that afternoon?

A. I remember when Finan went out after the trunk. I had a little tip and I followed him out to ask him.

Q. How long were you gone?

A. I went right back in.

Q. (COURT.) You don't remember whether you were out there at the telephone in the meantime, do you, while Mr. Finan was gone?

A. I think Detectives Smith or James were probably in there all the time.

Q. You don't remember whether you were out?

A. No, sir.

Q. But during the time you were in there you heard no threats or inducements or anything of that kind?

A. No, sir.

995 Mr. GROVER. I offer objection to the introduction of any confession or admission of facts at this time, regardless of the matter as to whether or not they were made voluntary and freely, for the reason that up to the present time the corpus delicti has not been proven, and it is universal that an extra judicial confession isn't a sufficient proof of the corpus delicti, and to admit an extra judicial confession before the corpus delicti is proved is bound to have some effect with the jury in determining upon the subject of the corpus delicti.

COURT. Further evidence not being at hand, I will withhold my ruling on this matter until Monday morning.

The further taking of testimony as to admissibility of statements, admissions, and confessions is suspended till Monday morning, April 29, 1904, and the trial before the jury now resumed.

* * * * * * *

1026 MONDAY MORNING, *February 28th, 1904.*

Testimony resumed in the absence of jurors as to the admissibility of confessions, statements, and admissions.

Mr. C. G. CABANNE, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name?

A. C. G. Cabanne.

1027 Q. What is your business, Mr. Cabanne?

A. I am connected with the St. Louis detective department.

Q. Were you so connected in the month of June, 1903?

A. Yes, sir.

Q. I will ask you, Mr. Cabanne, if on the 27th of June of last year, you saw the defendant?

A. Yes, sir.

Q. Do you know what day that was; what day of the week was it?

A. I don't remember.

Q. Where was it you saw him?

A. 2901 Franklin avenue, Leland Hotel.

Q. How did you come to see him there?

A. I went there to put him under arrest.

Q. State when you got there what you did?

A. Officer Kirk and I got off the Benton-Suburban car and the defendant was looking out of a window—second-story window. He had the curtain pulled back and he left the window as soon as he saw us, very suddenly, and I hollowed to Kirk to take the front door and I ran around to the back door, and as I came in through the hall he came down the front steps and Kirk placed him under arrest just as I got to him.

Q. Where had you been before you went to the Leland?

A. To Bonfils.

Q. That was on Saturday, June 29th?

A. I am not positive as to the day of the week.

Q. What time was it that you placed him under arrest?

A. In the neighborhood of four o'clock; I couldn't state positively as to that.

Q. At the time of the arrest did the defendant make any statements?

A. Not just at the time of the arrest, but shortly afterwards.

Q. What, if anything, did he say when you arrested him?

1028 A. He first asked us what we arrested him for, and we told him that we thought he had killed McCann, and we started up the street with him and he says, "Where are you going to take me?" I said, "Out in the woods to the mounted district." "Why don't you take me to Desmond's office?" he said, and I said, "You don't belong there. I am taking you where you belong for a little recreation." So we put him on the Suburban car. Officer Ball got off the car. We all changed cars at Sarah. We were on the Meramec High-

lands car and we changed. He telephoned for a wagon to meet us at Union and Vernon, and going from Union and Vernon to the mounted district station Barrington made a statement about the affair he had had with McCann—all about the trouble.

Q. State the circumstances under which he made it?

A. We were questioning him; we said, "We have pretty near established the fact that you went to Bonfils on the night of June 18th instead of to the Suburban Garden. We have got witnesses to that. Now, give us an account of yourself." So he made the statement that he had been up to the Suburban Garden and met a couple of men and a couple of women, or one woman—I am not positive as to the number of women—and that McCann and he and the two men and the woman were walking west from the Suburban Garden and McCann insulted one of the women. At least he heard her scream and the two men who were in company with these women took McCann and he tried to knock him down, and they gave him a beating and left him in an unconscious condition.

Q. What, if anything, did you or the other officers in charge of the defendant at that time say to him to induce this statement that he made?

A. We told him to give an account of where he was on that night.

Q. Previous to that you told him that you had pretty nearly established the fact that he had been out to Bonfils on the night
1029 of June 18th with McCann instead of where he claimed he was, and that it was the best thing for him to do—to tell the truth about it—and then he made the statement about the Suburban Garden?

A. Yes, sir.

Q. Were any threats or promises made by you or the other officers to him at this time?

A. No, sir; no threat or promise made.

Q. Did he state anything further on the way to the police station?

A. Nothing in the way of admissions or confessions.

Q. What was his conversation, if anything else here, that you remember?

A. Well, it took the whole trip for him to tell the story; until we got to the station.

Q. Did he say anything about being at Bonfils on the night of the 18th when McCann disappeared?

A. He said that later at Desmond's office.

Q. Was that the same evening?

A. Yes, sir; about 12 or 1 o'clock.

Q. (COURT.) What was said to him or by him at Mr. Desmond's office?

A. He and Captain McNamee and Desmond and Kiely had him in the room by themselves. I wasn't in there, but when I came in the room in the evening, from the conversation I gathered, he had said that the trouble came off at Bonfils instead of at the Suburban Garden. He said when he got off the car at Bonfils and walked up to

Taussig avenue, that he met these people that he had seen at the Suburban Garden previously in the evening. That is about all the statement I heard that was made in Desmond's office.

Q. You heard that yourself?

A. Yes, sir.

Q. Is that all that you recollect that he said in your presence in Desmond's office?

A. Well, he made a statement in regard to that cane.

Q. What was that?

1030 A. He said that Jim McCann had given him the cane.

Q. Did he say when he gave it to him?

A. He said he gave it to him the night of the fight.

Q. Did he identify this as McCann's cane?

A. Yes.

Q. Look at the cane and see if that is the cane that was shown him at the Four Courts.

A. Yes, sir; there is my name on it.

Q. You identify it by the mark you put there?

A. Yes; my mark is on it.

Q. Was anything else shown him in your presence in Mr. Desmond's office?

A. Jewelry was shown him—watch and charm and broken chain and ring.

(COURT.) It is not necessary to go into details as to what was said, except as to promises or threats.

Q. When he made this statement what, if anything, was said to him. Was any promise or threat or inducement held out to him to make this statement?

A. Not while I was there.

Q. When this jewelry was shown to him what did he say?

A. He said he knew nothing about the jewelry whatever, and Desmond tried to get him to identify the watch and he said he couldn't. He said McCann had a watch like that. We tried to get him to identify each piece separately and he wouldn't do it.

Q. What time was it you got to the Four Courts, about?

A. In the neighborhood of, I should judge, half past nine o'clock at night.

Q. And how long did you remain there with Barrington?

A. Until about one or two o'clock in the morning. There was one time I was out of the room only; that was when Desmond and Kiely and Captain McNamee had him by themselves in the room.

Q. And you were there all other times except this few minutes you speak of?

A. Yes.

Q. Now, during all the time that you were there with him

1031 did you hear or did anyone there make any threat or hold out any inducement or promise to him at the time he made any statements?

A. No, sir.

Q. How were those statements made, in reply to questions?

A. In reply to questions asked him by Desmond. Sometimes Kiely would ask him a question and sometimes Captain McNamee.

Cross-examination by Mr. GROVER:

Q. Now, Officer, did you arrest Barrington the first time that he was arrested?

A. No, sir; I did not.

Q. Who did?

A. I don't know, sir.

Q. He had been arrested on this matter the day before, hadn't he?

A. Probably the week before.

Q. In reference to this matter?

A. Yes, sir.

Q. In reference to this body at Bonfils?

A. No, sir; in reference to the disappearance of Jim McCann—he had been arrested before?

A. Yes, sir.

Q. Had he been arrested before the finding of the body?

A. Yes, sir.

Q. How long before, Mr. Cabanne, did you hear him make that prior statement in that prior arrest?

A. No, sir.

Q. And you don't know what was told him under the prior arrest, do you, by officers that examined him?

A. No, sir.

Q. Or anything about it?

A. No, sir.

Q. Now, the first that you had to do with the case was when you were called up suddenly, or were you called up suddenly?

A. Yes, sir. Captain McNamee left orders for me to go out with Pat Kirk.

Q. That was before he was arrested the second time?

A. Yes, sir.

1032 Q. Well, then, when you went out there you didn't find Barrington out there, did you?

A. No, sir.

Q. And you looked around and examined into matters and came back to town?

A. Yes, sir.

Q. And then you went down to the hotel to arrest Barrington the second time?

A. Yes, sir; my first time.

Q. Well, then, when you went down there you saw him up at the window upstairs?

A. Yes, sir.

Q. And Officer Kirk was with you, and who else?

A. Officer Ball started from Wellston, but got off, I think, at Union to telephone that Barrington was wanted.

Q. And you arrested him?

A. Yes, sir.

Q. And you started with him where?

A. Towards Garrison avenue to take him to the mounted district police station.

Q. That is the second arrest?

A. Yes, sir.

Q. You didn't start to take him from there to the quarry?

A. No, sir.

Q. Well, what was it you said when he asked you to take him to Chief Desmond's office?

A. "Where are you going to take me?" I said, "Take you out in the woods"—we speak of the mounted district as the "woods;" and he said, "I refuse to go," and so we urged him to come along, and then explained to him later where we were going to take him—to the mounted district.

Q. You made him go along with you?

A. Yes, sir.

Q. Did you take him to the mounted district?

A. Yes, sir.

Q. Then, when you got to the mounted district, you took him and went to Bonfils?

A. No, sir.

Q. When was that?

A. I think the arrest was made about four o'clock in the afternoon.

Q. Then, he wasn't taken to Bonfils on that day at all?

A. No, sir.

1033 Q. You took him from there to the mounted district station?

A. Yes, sir.

Q. Who went with you from there to the mounted district station besides Barrington?

A. Officers Ball and Kirk.

Q. Did you leave Barrington's presence on the way to the mounted district station?

A. Yes, sir; I left him to go into the drug store on the corner of Union avenue and the suburban tracks and got a glass of soda.

Q. And Officer Kirk was in charge of him?

A. One of the other two were with him.

Q. Were there three with him at that time?

A. Officer Ball, as I told you, got off at Sarah to telephone, and when we reached Union and Vernon Officer Kirk and I were with him ten or fifteen minutes before Ball arrived, but from that time until we arrived at the mounted station there were three officers with him.

Q. Now, when you went in to get this glass of soda, were there two officers with him at that time?

A. I couldn't state whether they were right with him or not, but someone was guarding him. Ball may have arrived or Kirk may have remained with him. There was someone with him.

Q. Now, you got to the mounted station. When did he first make this statement—these matters of confession that you are talking about?

A. Going over in the wagon from Union and Vernon to the mounted district station.

Q. Did you go on the street cars from the McCann residence to Union and Vernon?

A. Yes, sir.

Q. And call up a wagon there?

A. Officer Ball got off on Sarah to telephone and met us at Union and Vernon.

Q. And it was after you got in the patrol wagon that this
1034 took place—on your way to the mounted district station?

A. Yes, sir.

Q. There were three of you with him then?

A. Yes, sir.

Q. And then you took him up to the mounted district station?

A. Yes, sir.

Q. Now, when you got him up there did you search him?

A. No, sir.

Q. Didn't search him at all?

A. No, sir. Officer Kirk searched him, I didn't search him.

Q. Now, that is one time that a statement was made by him?

A. Yes, sir.

Q. Now, when you got there to the mounted station how long did you keep him there?

A. Well, he remained there until we took him to Desmond's office that night. The wagon left the station at 9 o'clock.

Q. You weren't with him after that?

A. I wasn't with him five minutes after we landed at the station, and I don't know anything about the rest of it. I went out to get the evidence.

Q. When was the next time you saw Barrington?

A. About 8.30 that evening at the mounted district station. I came back again.

Q. Then, how long did you stay with him?

A. The time it took to ride to Desmond's office from the mounted district.

Q. When you saw him you immediately went in the wagon to Desmond's office?

A. Yes, sir; and there I wasn't out of the wagon more than ten or fifteen minutes when I was called back in the meantime.

Q. Were there any statements made by Barrington at that time there at the mounted district station after you got back and before you started to the central station?

A. No, sir. He was making statements—he talked to anybody that asked any questions, but nothing he had not told me before.

1035 Q. He said nothing you hadn't already mentioned?

A. No, sir.

Q. Then you got in the wagon and rode down to the Four Courts?

A. Yes, sir.

Q. And there you were taken into Chief Desmond's office immediately?

A. Yes, sir.

Q. And there is where Desmond and Kiely and Captain McNamee and Barrington all got together and remained together for an hour or so in the absence of everybody?

A. No, sir. There were several officers in the room. Probably three or four assisted Mr. Desmond, McNamee, and Kiely for quite a while, and then Desmond thought he could do something with him by himself and didn't want the crowd around him, and he and Kiely and McNamee remained in the room with him for quite a while.

Q. Did either of these three come out while this secret examination of Barrington was going on?

A. Not that I know. There are two entrances to Desmond's office. They could have come out without my seeing them.

Q. Now, I will ask you if at the time you arrested Barrington if either you or Officer Kirk, in going from that place, 2901 Franklin avenue—the McCann residence—out to the mounted district station, made the statement to Barrington that you would take him out to the woods and string him up inside of two weeks?

A. No, sir.

Q. Did you make any statement that you would string him up inside of two weeks?

A. No, sir.

Q. Did you make any statement of any kind to the effect that he was going to be hung for what had taken place?

A. No, sir.

Q. Did you explain to him what the woods were?

A. No, sir. I think I told him it was the mounted district station.

Q. Now, at the time that you arrived at the central station and——

A. I wish to say that I had some words with Barrington

1036 going from the house to Garrison to get a car; what they were I don't know now, but I told it at the preliminary here.

Q. What did Kirk say to him?

A. I don't know.

Q. You and Kirk and Barrington were all that were together going over there; you three?

A. Yes, sir.

Q. Now, when you arrived at the central station was Barrington immediately taken back into the secret department of the detectives?

A. He was taken right into Desmond's office.

Q. Is that the time that the newspaper men and reporters and everybody got around and commenced to question him about this business and——

A. No newspaper men were allowed to question him. Desmond and myself and McNamee and Kiely were the only ones questioned him. Going down from the mounted district station in the wagon there were newspaper men.

Q. When they took him to the Four Courts and brought him in there you got out of the wagon and went in?

A. Yes, sir.

Q. When you went in isn't it a fact that immediately a rigid examination of questions and answers was made by both officers and newspaper men—they commenced to fire questions at Barrington like streaks of lightning as soon as he got there?

A. No, sir. Everybody was cleared out of Desmond's office except those that belonged there.

Q. Did you hear any questions by a miscellaneous crowd of those present at the Four Courts that night?

A. I did not.

Q. Isn't it a fact that when he was brought in there that the newspaper men and officers gathered around and that the newspaper men commenced "You so-and-so and so, and if you so-and-so," and fired those questions at him so rapidly it was impossible for a man to answer them, and then one man would turn around and say to another "He has already admitted so-and-so," when is was not true; isn't that a fact?

A. No, sir; it was not a fact.

1037 Q. Nothing like that took place at that time?

A. Nothing like that described by you.

Q. What did take place?

A. He was taken in there and put under a regular course of "sweating;" made to give an account of himself on a certain night.

Q. He was put through a regular course of sweating—made to give an account of himself on a certain night?

A. Yes, sir; cross-examined him like you are now.

Q. And there was a good deal of bluffing or bullying going on?

A. No, sir; Desmond will not allow anything of that kind in his office.

Q. No gesticulations?

A. Oh, yes; they may gesticulate.

Q. At the central station you say they were out for an hour or an hour and a half, in the other room, in private?

A. I said I was sent out of the room they were in.

Q. That is all right. Then, you didn't hear any statements of Barrington at the central station?

A. Yes, sir. He made the same statement to Desmond he had made in the wagon going over to the mounted district.

Q. Did he make that before or after Desmond and Kiely returned?

A. Before; and when I came in the room again he made the statement that he was at Bonfils and said all the statement he made about Suburban Garden was a lie.

Redirect examination by Mr. JOHNSTON:

Q. You don't know of your own knowledge when the first arrest took place; you had no part in that?

A. No, sir; I had no part in it. I don't know anything about it only from hearsay.

Q. Now, were you officers dressed on that occasion when you arrested him?

1038 A. Officer Ball was in uniform. Kirk and I were in citizen's clothes.

Q. You stated, Mr. Cabanne, that Chief Desmond wouldn't allow any bluffing or bullying of a prisoner to make any statement?

A. No, sir; he never will allow it.

Q. (Mr. GROVER.) Isn't it a fact that he knocked down Dean Cooper's murderer for the purpose of making him confess?

A. I don't know; I wasn't there.

Q. That will do.

Officer PATRICK KIRK, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. Patrick Kirk.

Q. What is your business?

A. Sergeant of police.

Q. What was your employment in the month of June, 1903?

A. Special police officer.

Q. Do you remember of going to the Leland Hotel, 2901 Franklin avenue, on Saturday, the 28th day of June, 1903?

A. 27th.

Q. Or the 27th?

A. Yes, sir.

Q. And what was your purpose in going there?

A. I went there to arrest Mr. Barrington.

Q. Who was with you?

A. Officer Cabanne.

Q. Were you in citizen's clothes or in uniform?

A. Citizen's clothes.

Q. When you arrived at the house what did you do?

A. Barrington was sitting upstairs in the front window. I went in the front door and he was coming down the steps and I put him under arrest.

Q. After placing him under arrest where did you go with him?

A. I took him out on the sidewalk toward the west, to Garrison avenue, and got on a suburban car, and it was a Kirkwood, and

1039 we got off on Sarah and transferred to Vernon and Union and waited at Union to call the patrol wagon.

Q. Now, then, while waiting for the patrol wagon what, if anything—any statements did the defendant make, and under what circumstances were they made?

A. He made a statement about being at the Suburban Garden.

Q. Where were you when this statement was made?

A. He was talking about it while waiting for the wagon and while in the wagon on the way to the station.

Q. When he said about being at the Suburban Garden, was it in reply to a question, or had any threat or inducement or promise been made to him to get him to talk?

A. No, sir.

Q. And you were with him all the time after his arrest until he reached the mounted district station?

A. Yes, sir.

Q. Tell what it was he said.

A. He said that he and McCann went to Suburban Garden on the night of June 18th, and that they met two men and a woman there—that Mr. McCann got into some trouble about the woman, and these two men got into a fight, and that Mr. McCann was knocked down and got beat, and he started to help him and he got beat also.

Q. Well, do you remember anything else he said?

A. Yes; he wanted to know where the body was found, so we didn't tell him after he got to the Four Courts.

Q. What was his language?

A. He wanted to find out where Mr. McCann's body was found—Jim McCann's—and we told him about finding McCann's shoes and pocketbook, and he seemed very anxious to find out where we found the pocketbook and also the shoes.

Q. When you got to the mounted district how long did you remain there?

A. I didn't remain there but about five minutes.

1040 Q. In whose charge was he left there?

A. Captain McNamee's.

Q. Where did you go after leaving the mounted district?

A. To 2901 Franklin avenue, back to the Leland again.

Q. Did you go down in the wagon from the mounted district to Desmond's office?

A. No, sir.

Q. Did you see the defendant again that night?

A. Yes, sir; at the Fourt Courts, about 9 or 9.30, in Chief Desmond's office, and different times there until one o'clock in the morning.

Q. Who was present when you saw him?

A. Captain McNamee, Chief Desmond, and Chief Kiely—thirty or forty were there. The sheriff was there, Mr. Bellairs and Sheriff Hencken.

Q. While you were present in Desmond's office did he make any statements; and if so, were they made in reply to any questions; or was any promise, threat, or inducement made him?

A. No, sir; any statement he made was made by asking him questions.

Q. You say you remained there off and on from about 9.30 until 1 o'clock with him?

A. Yes, sir.

Q. What parts of the time was it that you were away from there?

A. I wasn't there from about ten to twelve.

Q. In whose presence did you leave him when you left?

A. Chief Desmond's, Captain Kiely's, and Captain McNamee.

Q. And at any time while you heard him talk was any statement or any threat or promise or inducement used to force him to make that statement?

A. No, sir.

Q. That is all.

Cross-examination by Mr. GROVER:

Q. You heard the statement down at the central station, Sergeant Kirk?

A. I heard him make a statement after he was identified by all those railroad men that run to Bonfils.

1041 Q. After he was identified by all those railroad men that night?

A. A good many of them.

Q. When was that, as near as you can say?

A. Shortly after we got there.

Q. Now, how long was it after he got there? Hadn't he been taken back and examined by all these railroad men?

A. That may have been down before I got there.

Q. When you got there he was in Chief Desmond's office and the examination and identification had begun by the railroad men?

A. Yes, sir.

Q. And didn't several of them go up to him to look at him—several of these railroad men—and ask him questions?

A. I didn't hear any of them ask him questions.

Q. Where did that take place?

A. In the outer office.

Q. Were there any newspaper men present there at that time?

A. Yes, sir.

Q. Barrington was taken out before this crowd of railroad men and newspaper reporters and made this statement at the time they were identifying him there that night?

A. No; he was sitting in a chair all the time I was there.

Q. Those others were brought in early, or came in?

A. Yes, sir.

Q. This crowd of men who identified him, and the newspaper men, too, didn't a good many of them fire questions at him there?

A. Mr. Desmond only.

Q. You never heard any newspaper reporters ask questions?

A. No, sir.

Q. Wasn't he submitted to a general interrogation by everybody present?

A. No, sir. I never heard outsiders at all asking questions. Kiely and Chief Desmond asked him.

Q. How about the railroad men?

1042 A. Mr. Desmond asked him questions and they answered.

Q. Didn't they ask Barrington any questions?

A. I didn't hear them if they asked him any questions.

Q. Now, was this statement made there to him?

A. What statement?

Q. To Barrington, by one of the officers, "There are the railroad men that saw you coming back on the right of way that morning and there is no use in your denying it."

A. I never heard it.

Q. Did you hear "There are the men that saw you going out there that night with McCann on the railroad car—the St. Louis, St. Charles and Western car, and there is no use in trying to get out of it?"

A. I didn't hear anything like that, either.

Q. Nothing of that kind?

A. No, sir.

Q. Now, who was present when this arrest was made at the house?

A. Mrs. McCann and Tom Leonard.

Q. Mrs. McCann and Tom Leonard?

A. Yes, sir.

Q. They remained at the house, did they?

A. Yes, sir. We left them there.

Q. And you and Barrington and Cabanne started for the street car?

A. Yes, sir.

Q. And just you three?

A. Yes, sir.

Q. Did you take the Suburban car there in front of the house?

A. No, sir; on Garrison avenue.

Q. You took it on Garrison?

A. We walked to Garrison and Franklin and took the car there.

Q. Was there any statement made by Barrington over there?

A. No, sir; we didn't ask him any questions at all.

Q. Did Barrington resist when you arrested him?

A. He a kind of. He got to the fourth to last step when I

1043 placed my hand on his shoulder. I said "You are under arrest," and he had his hand placed back that way, and I pulled him down the step. He says "You are not going to take me," and I says "I will take you," and I opened the door and pushed him out and Cabanne came around from the back.

Q. And both of you hauled him off?

A. Yes, sir; he wanted to go to the Four Courts and we said we would take him to Forest Park station, that that was our headquarters.

Q. Was there anybody else besides you three there then?

A. No, sir; that was all.
Q. You got on the car there at Garrison avenue?
A. Yes, sir.
Q. On the Suburban car?
A. Yes, sir.
Q. And rode through to Union avenue?
A. Sarah.
Q. And got off there?
A. Yes, sir.
Q. Was anybody with you then?
A. We had met Officer Ball, I think, about Channing. He was going east and we called him off the car and us three went west together.
Q. When you landed at the mounted district station who was with Barrington?
A. The three of us.
Q. When you got down to Sarah street one officer went to call a wagon to meet you?
A. Officer Ball, yes.
Q. And when Officer Ball went to call the wagon Officer Cabanne went in and got a glass of soda?
A. That was at Union avenue, I think, he got it.
Q. That is where he got the glass of soda?
A. I think so.
Q. Are you sure about that?
A. I am not sure. He may have got it while we were waiting for the car at Sarah street.
Q. Now, when you got to Union one officer had left you. All three of you didn't go clear up to the mounted district station with him?
A. Yes, sir; Ball sitting alongside of him and I and Cabanne opposite.
1044 Q. Isn't it a fact one of you officers said to him on that journey from the McCann house out to the mounted station that you were going to take him out in the woods?
A. No, sir; I never heard that.
Q. You never heard that?
A. No, sir.
Q. Isn't it a fact that you also said, or some of you said, you were going to take him out in the woods and string him up inside of two weeks?
A. No, sir; I never heard that.
Q. After this matter was over you were promoted to a sergeantcy on account of the work done in the Barrington case?
A. I don't think this case had anything to do with my promotion.
Q. The newspapers say so, that is all I know about it. You don't think it had anything to do with it?
A. No, sir.

Q. Isn't it a fact they regard at the police station his arrest as one of the most important arrests—most important arrest had been made for years?

A. In our district; yes, sir.

Q. You rode from the mounted district station down to the Four Courts?

A. No, sir.

Q. When you got to the mounted district station, you left immediately?

A. Four or five minutes after I got there.

Q. When was the next time you saw him, officer?

A. At the Four Courts, about 9.30.

Q. You sweated him down there, didn't you?

A. Not me; no, sir.

Q. Did you hear him sweated?

A. No, sir; I heard him questioned.

Q. Well, you know what sweating is, officer?

A. Yes, sir.

Q. As it is generally carried on at the Four Courts in the detective department?

A. Questioning him.

Q. And a kind of bullying?

A. I never saw them bullying anybody.

1045 Q. Never heard them get loud and make gestures at prisoners?

A. No, sir.

Q. Didn't see any newspaper boys pitching into Barrington like a lot of hounds after a wolf?

A. No, sir. I don't think they allow anything like that in the Four Courts.

Q. Did the newspaper men question him?

A. No, sir.

Q. (COURT.) He was questioned by officers?

A. Yes, sir.

Q. This sweating process is simply questions and answers?

A. Yes, sir.

Q. Isn't it a fact Dean Cooper's murderer was knocked down to be made to confess?

A. No, sir.

Q. You never heard anything of that kind?

A. No, sir.

Q. Never heard the rumor?

A. No, sir.

Q. Do you know what patrol wagon it was that he was taken in from the station—mounted district station to the central district station?

A. I think it was No. 11.

Q. Do you know a negro that they call "Pigeon?"

A. No, sir.

Q. Do you know that this negro that was on the stand here the other day, Charley Morrison, that he is generally known as Pigeon something, or by the word "Pigeon?"

A. Yes, sir.

Q. You know Morrison pretty well?

A. Not before this case.

Q. Have you got his picture in the rogues gallery?

A. I never saw it.

Q. I want to know if he was present when these questions took place?

A. I don't know, I am not sure.

Redirection examination by Mr. JOHNSTON:

Q. About being taken to the woods——

(COURT.) That is so known, the mounted district?

A. If a man is transferred from down town out to the mounted district he has gone to the woods.

1046 Q. You said nothing to Barrington about being officers when you arrested him?

A. Yes, sir.

Q. (COURT.) Did you have stars on you?

A. Yes, sir.

Q. (COURT.) So as to identify you as officers?

A. Yes, sir.

Q. (COURT.) You were in citizen's clothes?

A. Yes, sir. He asked me what Cabanne's name was and I told him, and he said he heard a good deal of him and read a good deal about him.

Recross-examination by Mr. GROVER:

Q. You don't know anything about his first arrest, do you?

A. No, sir.

Q. You don't know whether or not Barrington knew what this word "woods" meant?

A. I have no idea.

Q. That will do.

Officer ROBERT L. BALL, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. Robert L. Ball.

Q. What is your business?

A. Police officer of the mounted district.

Q. Was that your business in June of last year?

A. Yes, sir.

Q. When was it you first met the defendant?

A. On the 27th day of June, about half past four o'clock.

Q. Were you with him on the suburban car with Officers
1047 Kirk and Cabanne?

A. Yes, sir.

Q. Where did you meet them?

A. On Channing avenue.

Q. And how long did you remain with them?

A. I rode on the car, I think, to Taylor avenue and I got off there to telephone to the station for a wagon.

Q. How long were you behind?

A. I telephoned him and got the next car out to Union and rejoined them at Union and went over to the station with them on the wagon.

Q. Now, during the time that you were with the defendant covering that trip, what, if any, statements were made by the defendant, and under what circumstances, if any, were they made? Were any threats or inducements or promises made to him by either of you?

A. There were no threats or any inducements of any kind?

Q. Do any talking?

A. He did some; yes.

Q. How did he come to talk?

A. I asked him about the revolver on account of finding these cartridges and he said he had one .38 caliber that he had gotten from a friend. I asked him who the friend was and he refused to tell. He said it was a Smith & Weston.

Q. Did you hear any other statement?

A. We asked him about the fight he had back of the Suburban Garden and he said that he had repeated that to Desmond and he had been released and he wouldn't speak further of that.

Q. Do you recollect anything else he said while you were with him?

A. I can't recollect anything else particularly.

Q. Now, when you got off the car to call for the wagon you left him in charge of Cabanne and Kirk?

A. Yes, sir.

Q. And how long was it before you rejoined them on Vernon avenue?

A. Well, I should say about ten minutes.

1048 Q. Did you go down in the wagon from the mounted district to the Four Courts?

A. No, sir; I did not.

Q. You saw him at the Four Courts that night?

A. Yes, sir.

Q. About what time did you get to the Four Courts?

A. I got to the Four Courts, I suppose, about ten o'clock.

Q. And saw the defendant there at that time?

A. Yes, sir; standing at the entrance to the Four Courts' door talking to Desmond; that is, up stairs opposite Desmond's office.

Q. Do you know who was present with you or him there?

A. Chief Desmond.

Q. Who else?

A. No person.

Q. How long did you remain there then?

A. I walked on past him.

Q. Were you present at any other time when he made any statement?

A. I was, part of the time, in Desmond's office.

Q. Who else was in there?

A. Kirk, Cabanne, and the captain, and quite a number.

Q. Did he make any statement when you met him in the office there?

A. Not that I heard.

Q. Did you hear any of the officers there at any time threaten him or promise him or offer him any inducement to get him to talk?

A. No, sir.

Cross-examination by Mr. GROVER:

Q. When you saw him there at the Four Courts was that the time that the railroad men and others had come down to identify him?

A. Yes, sir.

Q. Were they talking to him there?

A. Yes, sir.

Q. Did you hear any conversation between Desmond and the prisoner while these witnesses were there?

A. No, sir.

Q. Never heard anything at all?

A. No, sir.

Q. You don't know anything about his arrest?

A. No, sir; I do not.

1049 Q. Now, where was it that you came in company with these men?

A. At Channing avenue.

Q. On the street car?

A. Yes, sir.

Q. And you rode to Sarah street?

A. I rode to Taylor avenue.

Q. Now, do you know when you went in to call a wagon to come down and meet you?

A. Yes, sir.

Q. Do you remember the place where you came in?

A. I went to the police telephone box.

Q. Is that the time that Officer Cabanne went into the drug store of some one there to get a glass of soda water?

A. I was not there. I got off the car by myself and they went on.

Q. You were not there when he went into the saloon to get the soda water?

A. No, sir; I was not.

Mr. GROVER. Now, those are all the men were with him from the house to the mounted district station, they were all the men were there, and it looked to me like they have established no confession.

COURT. If there is any more evidence I would rather hear it.

Mr. J. W. BELLAIRS, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name?
A. J. W. Bellairs.
Q. What is your position?
A. Deputy sheriff of St. Louis County.
Q. Was it such in the month of June of last year?
A. Yes, sir.
1050 Q. Did you have occasion to go to the Four Courts in St. Louis on the night of June 27th?
A. Yes, sir; Saturday evening.
Q. For what purpose did you go down there?
A. I went from the mounted district with Captain McNamee in the patrol wagon
Q. Who was in the wagon?
A. Captain McNamee, Cabanne, Officer Ball, Mr. Barrington, and the driver, and myself.
Q. Had you seen the defendant at the station before he was taken away?
A. Yes, sir.
Q. How long had you been at the mounted district before you left in the wagon?
A. About half an hour. I got there about half past seven.
Q. Where was the defendant at the station about that time?
A. He was in one of the hold-over cells first.
Q. Did you or any officers in his presence have any conversation with the defendant at the mounted district station?
A. I did not.
Q. Did you hear him talking or say anything while you were there at the mounted district station?
A. Not at the mounted district.
Q. Going down in the wagon from the mounted district to the Four Courts, what, if anything, did the defendant say?
A. It was a general conversation about the weather; nothing about the case at all. No questions asked him.
Q. Did you remain with the defendant at Desmond's office?
A. Yes, sir.
Q. How long did you remain there with him?
A. Until half past eleven at night—somewhere about that. No; eleven o'clock. We got the last car coming back again.
Q. Do you know what time it was you arrived at the Four Courts?
A. About 9.15 or 20—something like that.
1051 Q. Then, do I understand you to say that he wasn't out of your hearing or presence from he left the mounted district station up to eleven o'clock?
A. I was out about two minutes. Mr. Desmond made the remark that he didn't want so many people in the office and I walked out, and afterwards he sent for me and I came back again.

Q. There, in Desmond's office, in your presence, did the defendant make any statement; and if so, under what circumstances was it made—any threats, promises, or inducements offered to him to make a statement?

A. None whatever. Chief Desmond and Kiely asked him some questions, which he answered.

Q. Answered him voluntarily?

A. Yes, sir.

Mr. GROVER. We object to voluntarily as a conclusion.

COURT. Yes; that is a conclusion.

Q. Now, what did he say? Describe how it was he came to make this statement.

A. They asked him the question of his whereabouts on this evening of June 18th, and also Chief Desmond spoke to him about the statement he made before about the trouble with Mr. McCann and himself at the Suburban Garden, and he admitted that he lied at that time.

Q. What did he say? Give the language he used. How did he come to say anything about that?

A. Well, as I understood the chief, he said: "Now, what you told me before, then, is untrue?"

Q. What had he then said which caused Desmond to say that?

A. He changed. He said that he had been out there that night to the Suburban, and then from there took the car out to Bonfils.

Q. You heard him say that?

A. Yes, sir.

Q. And then it was that Desmond said: "What you told me before was not so?"

A. Yes, sir.

1052 Q. Did he describe how he got out to Bonfils?

A. Yes, sir. And he said he met two men at this large tree, apparently to him the same men that he had seen at Suburban Garden the same evening.

Q. Did he say what time it was he had left the Suburban Garden?

A. About 10 o'clock. That is the time they got the car—something about before 10.

Q. Do you remember or recollect any other conversation—anything he said about what took place after he met these men out there at that big tree?

A. Well, he said they jumped on McCann and also on him and knocked him senseless and he laid there, as he thought, until nearly morning before he came to, until the rain came on—it began raining and it brought him back to his senses again.

Q. Now, was anything shown to the defendant that night in your presence?

A. Not that I know. Not that night in my presence.

Q. Now, at the time that he was making these statements and talk-

ing, at that time was there any big mob or crowd around Barrington?

A. No, sir. The chief asked them to go out. They were in the outer office.

Q. That is all.

Cross-examination by Mr. GROVER:

Q. There had been quite a crowd, Mr. Bellairs, that went out?

A. When we came in I guess there were fifteen or twenty people there—maybe more than that. I don't know.

Q. Did you ride down in the wagon?

A. Yes, sir.

Q. Were there railroad men witnesses there then, Mr. Bellairs?

A. Yes, sir.

Q. Did any conversation take place between these railroad men and reporters and the defendant before the crowd were sent out?

1053 A. Not in Desmond's office. There may have been in the other office. The railroad men were out on the outside. Desmond called several of them in the other office.

Q. With reference to meeting the two men by the big tree, was that statement made there that night of the arrest, or was that made when you took him out to Bonfils?

A. I think it was made on the Saturday evening in Desmond's office.

Q. Then, he was taken out to Bonfils?

A. Taken out on Sunday.

Q. Taken out on Sunday?

A. Yes, sir.

Q. To look at the body?

A. Yes, sir.

Q. And when he was taken out there he was taken out and shown the body, he was then in the custody of Chief Desmond and others?

A. In the custody of Mr. Hencken and myself. He was turned over to us Sunday morning.

Q. The chief wasn't along?

A. He was there, but he didn't go out with us.

Q. Why was he taken out to the Bonfils quarry?

A. He was taken out there by request of the officials of the city, I believe.

Q. What for?

A. He suggested himself that he would like to see the body. He didn't believe it was McCann's. I am positive he said something about the large tree. He conversed with me going out, but we didn't talk much about the case only the large tree.

Q. When was he taken to Clayton jail?

A. Sunday evening, after the post-mortem.

Q. And you don't know what the detective told him going down town?

A. He was in my charge.

Q. What he said in the holdover?

A. No, sir; I don't know what they told him in the holdover.

1054 Q. What time did you go down?

A. A little after 9. Got there at 9 and he was brought in Desmond's office after I arrived there.

Q. Are you sure he made no statement in reference to a fight out there at Bonfils Saturday night?

A. No, sir.

Q. He told about these two men at the big tree?

A. Yes, sir; and apparently the same men were at Suburban Garden.

Q. When Desmond got there he took Barrington to himself?

A. No, sir; I was within a few steps.

Q. Isn't it a fact he sweated him two hours by himself?

A. No, sir; he was in my charge and the only time when he was away from me was when Desmond and Chief Kiely took him, which was about five minutes, and I was not more than twenty steps away then.

Q. You didn't hear what was said then?

A. No, sir; I didn't hear what it was.

Redirect examination by Mr. JOHNSTON:

Q. There at the quarry did you hear the defendant say anything—make any statement about the body or about anything, and if so, at whose request?

A. He asked me several times if I would take him up there. He appeared to be very anxious. He wanted to know two or three times if there were one or two bullets found.

Q. Taken where?

A. Taken up to the body; and when he went up he said, "I don't believe that that is Jim McCann." He was taken to the body several times.

Q. (Mr. GROVER.) And he never did say that he believed it was Jim McCann?

A. He didn't believe it was positively.

Q. (Mr. GROVER.) He never did say that he did believe to the contrary?

A. Not to me.

1055 Q. (Mr. GROVER.) Nor in your presence?

A. Not that I am aware of.

Q. (Mr. GROVER.) Mr. Bellairs, isn't it a fact that on that Sunday before starting out there to Bonfils, that at the Four Courts Barrington broke down and cried like a child before being taken down there?

A. No, sir; he didn't in my presence. He seemed to be in good spirits.

Redirect examination by Mr. JOHNSTON:

Q. When you were there that night at Desmond's office was Mr. Cordel, Smith, or Greeley there?

A. Cordel was there and Greeley was there.

Officer GEORGE GREELEY, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. George Greeley.

Q. What is your occupation?

A. Police officer, city of St. Louis.

Q. Were you so employed in June of last year?

A. Yes, sir.

Q. Do you know the defendant, Frederick Seymour Barrington?

A. I am slightly acquainted with him.

Q. When was the first time you saw him?

A. Shortly after he got out of the workhouse in the city of St. Louis.

Q. I will ask you if you saw him on Thursday, about the 26th of June, at Chief Desmond's office?

A. No, sir; I saw him on the 27th of June.

Q. Where was he when you saw him?

A. I saw him in Chief Desmond's office.

Q. About what time?

A. In the night after seven o'clock.

1056 Q. How long did you remain there with him in the office?

A. Oh, I couldn't say just exactly.

Q. Well, who were present there while you were there?

A. Myself, Chief Desmond, Officer Finan, and several other people.

Q. While there in your presence did the defendant say anything or make any statements, and if so, what were the statements that were made? Had there been any threats, promises, or inducements?

A. He didn't make any statement in my presence; not while I was there.

Cross-examination by Mr. GROVER:

Q. You never heard any statement?

A. No, sir; I was busy with other things.

Q. Did you hear any of the boys asking him questions?

A. Chief Desmond asked him questions; what they were I couldn't say; I was busy.

Q. Did you hear any others?

A. He was the only one.

Q. Ever hear any of the newspaper boys?

A. The representatives of the press are not in the habit of asking questions in Chief Desmond's office.

Q. Did you hear any questions asked by representatives of the press that night?

A. I did not; no, sir.

Captain GEORGE T. MCNAMEE, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.
A. My name is George T. McNamee.
Q. You are captain of police?
A. Yes, sir.
Q. Where is your district, Captain?
A. Well, it is in the western part of the city.
1057 Q. Your station is what is known as the Forest Park Police Station?
A. Yes, sir; Forest Park Mounted District.
Q. Were you at your station on the 27th of June of last year?
A. Yes, sir.
Q. Now, I will ask you whether or not the defendant was brought to your station there?
A. Yes, sir; he was at the station before I arrived. I was at Forest Park Highlands.
Q. Do you know what time you arrived there?
A. Yes, sir; about 5.15. Between 5 and 5.15—about that time.
Q. What officers brought him there?
A. Well, I wasn't at the station. He was brought there before I arrived at the station.
Q. Was Officer Ball or Cabanne or Kirk there when you arrived?
A. They were gone. None of them were there.
Q. When you saw the defendant, where was he?
A. In a cell locked up.
Q. Did you have any conversation with him and did he make any statement to you, and if so, were any inducements offered him or threats or promises given him to make a statement?
A. None whatever.
Q. What did he say?
A. He started out by telling me that he had gone out with Mr. McCann and out back of Suburban Garden; that they had met some two men there and that they had had a row and a fight and in that that he got knocked down and got kicked and that the two men took McCann away. That was the statement—the synopsis of the statement—that he made to me at the station.
Q. That is at the mounted district station?
A. Yes, sir. Later he told me a different story.
Q. At your station?
A. That is practically what he told me.
Q. Who was present when he made the statement out there at your station?
1058 A. I don't believe anybody. I talked to him in his cell and he told me that in a short way. Of course, later I went into the thing more deeply.

Q. Was he there in your custody and charge until the wagon arrived to take him to the Four Courts?

A. Yes, sir.

Q. Did you go down in the wagon?

A. Yes, sir.

Q. Who was in the wagon?

A. Detective Cabanne and the defendant and the signal officer, Louis Basquill, and myself, and Mr. McAtee, the reporter, and Mr. Young, and on the seat of the wagon was Mr. Bellairs, your deputy sheriff here.

Q. On the wagon going down to the Four Courts did the defendant make any statement, and if so, under what circumstances were they made?

A. Well, I questioned him a good deal on the road down as to the—you might call it a cross questioning, or trying to get him to explain this and this, but he stuck all the way down about to the same story that he told me in the office.

Q. That is, to the Suburban Garden story?

A. Yes, sir.

Q. When you arrived at the Four Courts where was the defendant taken?

A. He was taken into Chief Desmond's office.

Q. And who was present there when he was taken in there?

A. Well, there was Chief Desmond and myself and Detective Finan, Cabanne, and Kirk, and the reporters, McAtee and Young, and another reporter came in. That is when he was brought in, but when they were all put out and excluded from the room during that examination. That is, the press were.

Q. While there in Chief Desmond's office and in your presence, what, if any, were the statements that the defendant made, and under what circumstances were they made? Were there any promises or threats or inducements made to the defendant, by you or Chief
1059 Desmond or any of the officers, to induce the defendant to talk or make a statement?

A. No, sir.

Q. Now, if any statements were made there tell what they were.

A. Well, Chief Desmond took the defendant in and after questioning him for quite a while he wanted him to tell the truth—wanted to know why he did it—and he finally commenced to cry and said that he had lied to the chief, that the story was not true; that he didn't want, for a certain reason, to give the matter away. The chief said "Well, tell us the truth." "Well, I will tell you the truth now," he said, and he stated that while out there they *they* met two men and a woman and that they got into a difficulty, and that Mr. McCann stabbed the woman and that she was taken away hurriedly in a carriage some place, and that they got back again and then took McCann away. That was the story; the statement.

Q. Where did he say this took place?

A. Still at the Surburban; only changed the story by bringing the woman in the case and McCann stabbing the woman.

Q. Were you there when the railroad employees were taken there to see if they could identify him?

A. Yes, sir.

Q. After identifying the defendant did he make any further statements; say anything about his being at Bonfils?

A. I can't answer that question. I stepped out. That statement, as I understand, was made to two or three others.

Q. How long were you absent?

A. I just stepped out of the room a little while, and I understood that he made other statements, but to me he did not.

Q. Do you know about how long you were absent from the room?

A. Oh, I think about fifteen minutes.

Q. Did he make any other statements in your hearing that night under similar circumstances as the first was made?

A. No, sir; that was the last statement he made in that office
1060 in reference to that night. He made other statements to me later on.

Q. When did he next make any statement to you, and where was it?

A. Well, on Sunday we went out to exhume the body, and while out there, while the men were holding the post-mortem, he was away from the place probably about 30 yards, in charge of Chief Desmond. They were standing away off from this place. Well, I went over there, and the chief had him talking to him, and I took him in hand then and questioned him. I questioned him as to the finding of the watch and chain found on the mud board of our wagon.

Q. Did he make any statement to your questioning him?

A. I put about this kind of a question to him: I said, "Barrington, now you might facilitate matters by telling me where those clothes are. They are around here, and you know as well where those clothes are as you do about that watch and chain." Well, he said, "Captain, if I told you that, I might as well destroy myself at once; but I never murdered that man."

Q. Were you present when he was shown the body?

A. No, sir.

Q. Did you hear him say anything about any bullets?

A. Well, now, I will correct that first statement. If he was shown the body before I came there, which I think he was, I don't know, but I think he was, but he was taken over there while I was there, and he got down and asked questions about how many bullets, and looked at the places, and Dr. Randle, I believe, pointed out the different things to him.

Q. Was that at his own request?

A. Yes; he asked those questions.

Q. Who was it that brought him out to Bonfils that Sunday?

A. He was taken from the 4 Courts.

Q. Do you know who took him out there?

A. I couldn't swear to that, because I wasn't with him.

1061 Cross-examination by Mr. GROVER:

Q. Captain, when Chief Desmond was standing off about 30 yards questioning him, were Chief Desmond and Barrington alone?

A. Well, practically alone.

Q. They were out of the hearing of everybody?

A. The chief of police was close around. I would say that they were by themselves, but the chief was probably five or six feet away and walking around here and there.

Q. Do you think at all of the time that Chief Desmond was talking with him—do you think that Chief Kiely was within hearing distance of all of it?

A. No, sir; I don't think so—I don't think so, not all of the time.

Q. Some part of the time Barrington and Mr. Desmond were alone?

A. Yes, sir.

Q. Now, officer, when was it that he broke down and cried?

A. In Desmond's office.

Q. Now, that was just before this statement was made about this business out at Suburban Garden?

A. It was just prior to the time that Desmond told him he had lied, and he finally admitted that he had lied to him.

Q. He cried very bitterly?

A. Yes, sir.

Q. Showed a great deal of agitation?

A. Yes, sir.

Q. Now, any of these statements, Captain, that you heard made; were any of them ever reduced to writing at the time?

A. I believe that there was a stenographer—I believe that Shaw was there; either Shaw or O'Keefe.

Q. And he took notes of this?

A. Yes, sir; either one. I believe it was Shaw, though.

Q. You don't know of any other statements, Captain, being reduced to writing?

A. No, sir.

Q. Now, Captain, when the railroad employés were brought in there to identify him, and up to that time, Barrington had pre-

1062 tended to be at the Suburban Garden, until they were brought in to identify him?

A. Yes, sir.

Q. When they were brought in to identify him did Chief Desmond or anybody else say to him, "There are the men that saw you and you can't deny it?

A. I don't recollect Desmond making that remark.

Q. Desmond asked him a good many questions?

A. He surely did.

Q. Didn't he make any reference to the railroad men having seen him out there? Did he say something like this, "Now here is the

conductor and motorman on the railroad out there that saw you that night, and there is no need of you denying it."

A. No.

Q. Do you remember his saying anything about the railroad men at all, about the time he admitted he had lied about the Suburban Garden matter?

A. No. He stuck to that first story.

Q. Until he cried?

A. Yes, he stuck to that first story. He made another statement though, as I understand, but not to me.

Q. Now, Captain, he broke down and cried and then admitted that he lied. Now, hadn't the railroad men been brought in there and confronted him, before that took place?

A. I believe part of them may have been in there. They were not all examined, but part of them had seen him, but there were a number that were called afterwards.

Q. Now, do you remember anything that Chief Desmond said to Barrington about these men saying about that?

A. No, I couldn't say just all the questions he put to him. I don't remember. I am not so very clear on just what he may have said.

Q. Now, Captain, when you stepped out and were out there about fifteen minutes—that you spoke of a while ago, who was left with the prisoner then that you remember?

A. Well, Desmond was still questioning him at the time. Kiely was there.

Q. Desmond and Kiely were still there when you went out?

1063 A. Yes, sir; and Officer Cabanne.

Q. And when you returned were they still there?

A. Yes, sir.

Q. Now, when you were the , Captain, did they bring this watch and chain in and show it to him?

A. Yes, sir; that watch and chain were brought in and handed to Chief Desmond.

Q. And then what did Chief Desmond do with the watch and chain in Barrington's presence?

A. He just asked where that watch and chain were. He was asked if he would know McCann's watch and chain, and he said he would, and I believe Mr. Barrington asked where was it, and the chief said, "Here it is," taking out the watch and handing it to him; and he said that he believed that that was McCann's ring and watch and chain.

Q. Was the trunk brought up, too, Captain?

A. Yes, sir.

Q. So that watch and chain matter took place before he broke down and cried?

A. Oh, no; that was after; that was some time after.

Q. Now, had the trunk been brought in when he broke down and cried?

A. I believe not.

Q. Captain do you remember what kind of a wagon that was in which he was taken from the mounted district station down there?

A. Yes, sir; a regular patrol wagon with what we call a mud board on either side. It was a board that was about ten or eleven inches wide, placed there for the purpose of keeping the mud from splashing on the wagon.

Q. Well, that is not material now. Did you hear any of the reporters or any of them question him on the wagon?

A. Several questioned him in the wagon. I know he was asked several questions on the road down in the wagon.

1064 JOHN F. SCHMIDT, Esq., being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name?

A. John F. Schmidt.

Q. Mr. Schmidt, what is your business?

A. I am a detective.

Q. Were you so engaged in the month of June, 1903?

A. Yes, sir.

Q. I will ask if you saw the defendant, Barrington, on a Thursday night, the 25th of June of last year?

A. Yes, sir.

Q. Where is it you saw him?

A. On June the 25th we arrested him.

Q. Who was with you when the arrest was made?

A. Officer James.

Q. Where was it you arrested him?

A. Thirty-first and Franklin avenue.

Q. At the time that you arrested him did the defendant make any statement or say anything, and if so, under what circumstances were they made. Had there been any threat or statement or promise of anything made to him?

A. No, sir; none whatever. We brought him to the office. On the way of the office he said nothing. At the office Chief Desmond talked to him in my presence and James's presence.

Q. Were you there at the time?

A. Yes, sir.

Q. When he talked there in Desmond's office, had any promise or threat or inducement been offered him to induce him to talk?

A. No, sir.

Q. Tell us what was the conversation?

A. He stated that on the night of the 19th himself and Mr. McCann had left to get some quinine.

Q. What was the date?

1065 A. On the 19th. From there they boarded a car, one of the Suburban cars, and there met two gentlemen and two ladies that seemed to be frineds of McCann's, and spent the evening around in the park until about 12,20. One of the girls had left, and the

other gentleman and lady walked out on the railroad tracks on the dirt road, and while on their way to that first dirt road Mr. Barrington stated that Mr. McCann had talked disrespectfully about his wife, and Mr. Barrington didn't like that idea; he talked back at him, and it seemed, the way he said, McCann took offense and struck him over the shoulder, on the face, and on the thumb. So they made up again and walked on until they struck the dirt road and they turned off about seventy-five feet up there in a meadow, and the two gentlemen were close by, and the lady and Mr. McCann, Mr. Barrington said, were close to the railroad track. They were there but a few minutes until the woman cried and hollowed for help, and the two gentlemen assaulted Mr. McCann with their canes, and when Mr. Barrington saw that he went to his assistance and they assaulted him—beat him and kicked him, and threw him down in a gulley there, so he lay there; and he saw the larger man of the two went down the railroad track towards the garden again, and he wasn't gone long until he came up the dirt road with a cab, and while he was lying there McCann came up to Mr. Barrington and asked him for some money. Barrington gave him $27.50—said that was all the money he had, and when the cab came around they all got into the cab, and Barrington lay there insensible until the next morning, when he got up and walked home.

Q. Was that practically all of the statement he made on this occasion?

A. Yes, sir; that is what he stated that evening.

Q. What was done, then, with the defendant after he made this statement?

1060 A. It was eleven o'clock—may have been fifteen minutes after; the chief ordered myself and James and Detective P. M. Cordell to take this man out to Suburban Park and have him show us the place where he was assaulted, and we went out and over the ground—went over the place—and he told us if we thought Barrington was telling the truth to let him go; if not, to bring him back and lock him up; so we locked him up, and he remained in the hold-over until the next day, when he was brought up and released.

Q. Were you present when he was brought up and released?

A. I think I was.

Q. On the way out to the Suburban Garden with him, did you have any conversation with him that night?

A. No more than an ordinary chat out on the cars.

Q. When he got out to the Suburban Garden what did he do?

A. He showed us where they started from away up the railroad tracks and took us to the dirt road, and went up to the west side of the garden and showed us where the road ran to, and came back down on the car then.

Q. Did he, in any of his conversations, say about the time this took place?

A. He said it was about 12.20 when they left the garden and went north.

Q. How was it that you came to take him to Chief Desmond's office the first time; was he under arrest?

A. The chief ordered us to go out and arrest him.

Q. When you arrested him did he know whether or not you were officers?

A. We told him we were officers.

Q. Did he go voluntarily?

A. Yes, sir.

Q. Do you know Mr. Albert Davis?

A. Yes, sir.

Q. Was he present during this conversation down in Mr. Desmond's office?

A. Yes, sir.

Q. Was Mrs. McCann there?

A. Yes, sir.

1067 Q. There was yourself and Mr. James, Chief Desmond, Mrs. McCann, Mr. Davis, and the defendant?

A. Yes, sir.

Q. Do you remember anyone else that was present?

A. Two or three reporters around there.

Q. Were they present when Mr. Desmond was questioning Barrington?

A. They were in and out all the time.

Q. Who was it went out to the Suburban Garden?

A. I think three reporters went out there—that is, I don't know their names.

Q. Mr. Davis, did he go out there with you?

A. Yes.

Q. That is all.

Cross-examination by Mr. GROVER:

Q. You don't know anything about the second arrest, do you, Mr. Schmidt?

A. No; I don't know of that.

Q. You never heard anything in reference to anything stated by him after the second arrest?

A. No.

Q. So all you know about is the first arrest?

A. Yes.

Q. When did you make the first arrest?

A. About 6.30; in the neighborhood of 7 o'clock.

Q. In the evening—that was on Thursday?

A. I wouldn't say Thursday.

Q. Do you remember the day of the month?

A. It was on the 25th.

Q. And it was the next day that he was released?

A. Yes.

Q. And then he was arrested again in the evening of the day that he was released, wasn't he?

A. I don't think so.

Q. That is, you took him to the central station on the night of the 25th after arresting him at six o'clock?

A. The night of the 25th was the first arrest, and we took him to the Suburban Garden, and after returning it was about one o'clock.

Q. Before that you took him down to the Four Courts

1068 A. Yes, sir.

Q. You arrested him at 6.30, then went to the Four Courts?

A. Yes; brought him right to the office.

Q. Did you go directly to the 4 Courts?

A. Yes, sir.

Q. Now, who was with you when the arrest was made?

A. Officer James.

Q. And then when you got to the 4 Courts, about what time was it?

A. I should judge it would take us about half an hour to go there.

Q. Then what was done with Barrington?

A. We had him upstairs in Desmond's office.

Q. How long did you keep him there?

A. Pretty near eleven o'clock—up to the time we went to the garden—eleven or pretty near eleven.

Q. Were you with him all the time?

A. I was with him all the time.

Q. You were never out of his presence?

A. Yes, sir.

Q. From six-thirty to eleven o'clock?

A. Yes, sir.

Q. Never out of his presence a minute?

A. I might have walked out of the room and back in again.

Q. When you and Officer James arrested him on 31st and Franklin, a fake telephone message had been sent to him that Mrs. McCann wanted to see him?

A. Yes, sir; there was a telephone message sent him.

Q. It was a fake?

A. I don't know anything about that.

Q. Who sent that message?

A. I don't know anything about that, either.

Q. You don't know who sent it?

A. No.

Q. Did Mrs. McCann send it?

A. I couldn't say.

Q. Did she tell you she sent it?

A. I couldn't say.

Q. Did you ask her to say so?

A. No, sir.

1069 Q. Did you have any understanding with Mrs. McCann, that you were to have a message sent and get Barrington at this place, 31st and Franklin and arrest him?

A. Desmond instructed us to go to this place up on 32nd and Franklin, and have Mr. Barrington come up there, and to arrest him and bring him to his office.

Q. And you don't know who sent the message?
A. No, sir.
Q. But you do know a message had been sent to Barrington to decoy him to that place?
A. Yes.
Q. When you met him there you made a rush at him at once?
A. I didn't meet him there.
Q. Where did you meet him?
A. I met him out on the street.
Q. You went over there in a hurry and told him who you were?
A. Yes, sir.
Q. Asked him if he had a revolver?
A. Touched him on the outside to see if he had a pistol on him. Touched him up on the outside.
Q. Did you pretend that you had arrested him for carrying a revolver?
A. We understood he would have a gun on him.
Q. You arrested him under pretense——
A. We were ordered to take this man and bring him to the office.
Q. When you arrested him your statement to him or your reason for the arrest was——
A. The chief said you better see if he has got a gun on him.
Q. When you arrested Barrington you said to him, "We understand you have got a revolver?"
A. No, I don't think we did.
Q. Didn't you pretend to make the arrest on the ground that he was carrying a revolver?
A. Not exactly, no.
Q. You didn't tell him that?
A. No.
Q. What did you tell him you arrested him for?
A. We arrested him on orders from the chief.
Q. You didn't tell him it was because he was carrying a
1070 revolver?
A. No.
Q. When you arrested him there on the street where did you take him to?
A. I walked to this beer garden.
Q. You arrested him there and took him to the Four Court's station?
A. Yes, sir.
Q. As you started there, what car did you get on?
A. We took the car.
Q. What car?
A. Olive street, I think.
Q. Do you remember where you took it?
A. On the same street—32nd.
Q. And there you took the car and went to the Four Courts?
A. Yes, sir.

Q. And you went into that saloon there and called up the station and said you had him under arrest?
A. Yes, sir. That was on 32nd and Franklin avenue.
Q. And the other officer stood outside with him until you returned?
A. Yes, sir.
Q. And you were out of his presence at the time?
A. Yes, sir.
Q. Did you find the revolver on him?
A. We didn't find anything on him.
Q. When you got him at the Four Courts did you search him pretty well?
A. Yes, sir.
Q. Did you find anything?
A. Found nothing.
Q. After was he released the next day?
A. I don't know the chief's orders.
Q. That is all.

Officer JOSEPH H. JAMES, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

1071 Q. State your name.
A. Joseph H. James.
Q. What is your business?
A. Police officer.
Q. Where?
A. In the city of St. Louis.
Q. Were you so employed during the month of June of last year?
A. Yes, sir.
Q. State if on a Thursday, the 26th of June of last year, you met defendant, Barrington.
A. 25th.
Q. And where was it you met him?
A. 31st and Franklin avenue.
Q. Under what circumstances?
A. We were sent out to arrest him.
Q. Who was with you?
A. Detective Smith.
Q. What place did you arrest him?
A. Right on the street.
Q. Where did you go with him after the arrest?
A. Into the garden there.
Q. Where?
A. Compton avenue, to use the telephone.
Q. And after telephoning, where did you go?
A. To the station.
Q. On what?
A. On the street car.

Q. On the way to the station did the defendant make any statement or talk to you about why he was arrested or anything?

A. No. He asked what he was arrested for, and we told him the chief wanted to see him.

Q. You said nothing to him about why he was arrested?

A. No.

Q. When you got to the Four Courts where did you take him?

A. To Chief Desmond's office.

Q. About what time was it you got him there?

A. We arrested him about 6.30 in the evening.

Q. Arriving at the Four Courts about 7 o'clock?

A. Probably a little later.

Q. Who was present in Chief Desmond's office when you took him in on the first occasion?

A. There was my partner.

1072 Q. Who is he?

A. Detective Smith, and the chief and several other men.

Q. How long were you in there with the defendant and Chief Desmond?

A. We were in there until about 11 o'clock at night.

Q. Now, while he was in Desmond's office and you were there did the defendant make any statement or talk; and, if so, under what circumstances?

A. He made a statement.

Q. How did he come to make it?

(COURT.) Who spoke first, and what was said?

A. The chief asked him if he knew McCann, and he says, "Yes," and he asked him where him and McCann went to on the night of the 19th. Do you want a full statement of what transpired then?

Q. (Mr. GROVER.) Did you take this down at the time?

A. Yes, sir.

Q. At the time the statement was made?

A. Yes, sir.

Q. (Mr. GROVER.) As it was being made?

A. Yes, sir.

Q. Did you write it yourself?

A. Yes, sir; it is my writing.

Q. Taken there at the time he was making the statement?

A. Yes, sir; he made a statement and I wrote it down.

Q. Did he sign it?

A. No, sir. I didn't put it down in the office. I went down in the office and wrote it down outside.

Q. And Barrington was taken in the office.

A. He was taken in the office.

Q. And you were writing it down—you heard his statement. You were in another room away from Barrington and you wrote it down?

Q. (Mr. JOHNSTON.) Testify from your recollection.

A. Well, Barrington stated on the night of the 19th of June——

Q. 19th?

A. Yes. That him and McCann left the Leland House—stated that they went to the drug store to get some headache powders for Mrs. McCann, and they took a Suburban car and went to the
1073 Suburban Garden, where he met two unknown men and two unknown ladies, supposed to be friends of McCann's. About 12.30 the following morning—12.30 a. m.—the two unknown man and one of the girls and McCann and Barrington went north on the Suburban tracks to a dirt road about two miles and a half from the loop. On the way going there McCann and Barrington engaged in a fight. Barrington stated that Mr. McCann talked disrespectfully towards Mrs. McCann. Barrington also stated that McCann struck Barrington over the thumb with his cane, and they later made up and remained friends and continued their journey to this roadway, and that McCann and this girl went up under a tree about 75 feet from the railroad track, and soon she called for help. Those two unknow' men went to her rescue. There was a fight engaged in. McCann called for help. Barrington went to his rescue. Barrington stated that he was knocked to the ground and rendered unconscious. He later regained consciousness and he saw a heavy-set man leave. In about half an hour he came back with a cab; one horse attached to it. McCann asked him if he had any money, and he said he gave him $7.50. The heavy-set man drove the cab, and Mr. McCann and the unknown man—that is, the unknown driver and his partner got in the carriage—all got in the carriage except Barrington. Barrington laid there in the dyke until about 5 o'clock in the morning, and returned to his home. Do you want to know anything about the $27.00?

Q. Yes; where was it? You have detailed all you heard in the first statement—have you told all?

A. Yes.

Q. Now, what was done with Barrington after he made this statement, do you know?

A. Why, we took him to the station and locked him up.

Q. Was he taken to the Suburban Garden?

A. Yes, sir.

Q. When was it that you took him out there?

A. That same night.

1074 Q. Who was with you then?

A. Cordel and Detective Schmidt.

Q. On the way out there did he make any statements or have any conversations about the same matter with either of you, in your presence; and if so, under what circumstances was it that they were made?

A. Why, he didn't say anything, of course. Only stated that McCann would show up some day. That is all he said.

Q. Now, when did you next see the defendant, and where?

A. I seen him in Detective Desmond's office.

Q. On what day?

A. The 27th.

Q. What time?

A. Between 9 and 10 o'clock at night.

Q. Who was present, if you remember, Mr. James?

A. Well, there was Kiely, Detective Schmidt, and Finan and several others.

Q. At that time did the defendant make any statement; and if so, under what circumstances was it he made it?

A. Well, I didn't hear but very little of it.

Q. Did you hear anything of the statement made when the cane was taken out of the trunk?

A. He stated that the cane belonged to McCann. He gave it to him the night of the 19th, while he was with him.

Q. You mean to say that McCann gave the cane to Barrington?

A. That is what Barrington stated.

Q. Under what circumstances was it he made that statement?

A. The chief asked whose cane it was, and he said it was McCann's.

Q. Do you recollect any other statement he made that night that you heard?

A. No; there was a revolver taken out of the trunk also; that was all I seen.

Q. When the revolver was taken out did he make any statement to you?

A. He owned up that the revolver belonged to him.

Q. Did he make any statement about it?

1075 A. He said McCann gave it to him.

Cross-examination by Mr. GROVER:

Q. This second time he was down there, he was sweated then?

A. Yes, sir; what they call cross-questioned.

Q. Don't they call it sweating?

A. Yes, sir.

Q. He was sweated according to the usual meaning—a person charged with crime is sweated; wasn't he?

A. Yes, sir.

Q. Now, when you first arrested him—on this first arrest, when you went up there to the garden, did you go in the garden and sit down at a table?

A. We arrested him on the street, and took him into the garden and used the telephone—'phoned the chief that he was arrested.

Q. Whose garden was that?

A. I don't know whose it is.

Q. Did you sit down at a table there?

A. Yes, sir.

Q. When you and Barrington sat down at the table, the other officer, Schmidt, went and telephoned to headquarters?

A. Yes, sir.

Q. Do you know where that garden was located?

A. On Compton avenue and Franklin avenue.

Q. And while he was away telephoning you couldn't hear what Schmidt said?
A. No, sir.
Q. He was out of hearing?
A. Yes, sir.
Q. Well, then, you went on down to headquarters?
A. Yes, sir.
Q. Mr. Davis, who is assisting the State, and Mrs. McCann came up?
A. Yes, sir.
Q. Word had been sent over the telephone to Barrington that Mrs. McCann wanted to see him at that place?
A. I don't know anything about that. When I placed him
1076 under arrest he said he had an appointment there to meet somebody and expected them in a couple of minutes, and shortly afterwards a gentleman came in with a light hat and smooth face and said his name was Davis.
Q. Had Mrs. McCann been down at the station before?
A. I don't know.
Q. Had you ever seen her before in your life?
A. I had never seen her before.
Q. When you first arrested him you searched him, and told him you understood he was carrying a revolver?
A. No, sir.
Q. Did you make the arrest on the ground that he was carrying a revolver?
A. We arrested him and searched him for a revolver like we do all prisoners.
Q. Did you say anything to him at that time, either of you, that you understood he had a revolver, or carried a revolver?
A. No, sir.
Q. Never said anything like that at all?
A. No, sir.
Q. Did he ask you what you arrested him for?
A. Yes, sir.
Q. What did you tell him?
A. That the chief wanted to see him.
Q. Did you tell him anything further?
A. That is all we knew.
Q. When did you have this talk about the Suburban Garden?
A. After we took him to the office.
Q. You had no talk with him until you got him to the office?
A. No.
Q. Do you know where the mounted district station is?
A. Yes, sir.
Q. Captain McNamee is in charge of that?
A. Yes, sir.
Q. It is quite a prominent station?
A. Yes, sir.

Q. And there is always somebody there in charge of the station, isn't there?

A. I suppose there are in all stations.

Q. Whether parties are at supper or elsewhere there is always somebody in charge?

A. Yes, sir.

1077 Q. That will do.

Mr. JOHN W. CORDELL, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. John W. Cordell.

Q. What is your business?

A. Police officer of the city of St. Louis.

Q. What was your employment in the month of June of last year?

A. Police officer.

Q. I will ask you if on the 25th of June you saw the defendant, Frederick Seymour Barrington?

A. Yes, sir.

Q. Where was it you saw him?

A. In the chief of detectives' office in the city of St. Louis.

Q. What time was it you saw him there?

A. Along in the afternoon.

Q. Do you know about the time?

A. Somewhere about, if I am not mistaken, one or two o'clock. Somewhere along in there.

Q. Who was present?

A. The chief detectives was present. I don't know all. There were a number of the officers around there at the time I saw him.

Q. Did you see Schmidt and James there?

A. I couldn't say that I saw them there then. I saw them in the evening, though.

Q. What time was it in the evening you saw them there?

A. 7 o'clock.

Q. About 7 o'clock?

A. Yes, sir.

Q. Did the defendant at that time make any statement; and if so, under what circumstances did he make the statement?

1078 Yes, sir; he made a statement there in the evening in a conversation with the chief of detectives in regard to a man by the name of McCann who had taken a trip up to Suburban Garden with him that evening, and he also stated when they went out to to the park they met——

Mr. GROVER. I don't think it is necessary to go over the story again.

COURT. He may state.

Q. You say it was in a conversation between himself and Chief Desmond?

A. Yes, sir. He volunteered the statement himself. Made the statement of his own free will.

Q. That was in response to a question that Mr. Desmond had asked him as to what he knew about McCann?

A. Yes, sir.

Q. What was it that defendant had said to him?

A. I can't recollect the exact words, but Barrington and Mrs. McCann came down to the chief's office during the day, in regard to the disappearance of this man McCann, and he seemed to be very much interested in trying to locate McCann, and one thing and another, which led up to this conversation during the evening.

Q. Then this conversation of the evening referred back to the afternoon, did it not?

A. Yes, sir.

Q. Do you know what it was that the chief said to him in the evening?

A. He asked him where did he see McCann last, and he said the last time that he saw McCann was out on the Suburban Railroad tracks—street car tracks, about two miles and a half north of the Suburban Garden; then he went on and related a story about making a trip out with McCann and a couple of other men and women. He said they were all intoxicated except him, and that they went out there.

You need not state that; you say that you saw him and Mrs.
1079 McCann at Chief Desmond's office in the afternoon. At that time was he under arrest in the afternoon?

A. No, sir; not at the time he came there with Mrs. McCann.

Q. Did he make any statements about McCann or his whereabouts in the afternoon that you heard?

A. I don't recollect, because I wasn't interested in the matter and I didn't pay any attention to it.

Q. He was then in company with Mrs. McCann?

A. Yes, sir.

Q. And were they talking to Chief Desmond?

A. I presume so.

Cross-examination by Mr. GROVER:

Q. When Barrington was first brought in there that evening, who spoke first, Barrington or the chief?

A. Well, I couldn't exactly say that.

Q. Well, immediately upon his coming in the chief commenced to ask him questions?

A. No, I don't think the chief did. I think I aked him the first question, if I am not mistaken.

Q. That was before he made any statement, wasn't it?

A. Yes, sir.

Q. And you asked him a few questions?

A. I asked him one question and then he went on——

Q. And then the chief asked him a question?

A. I think the chief asked him one or two questions in regard to when he had seen McCann last—he came there with the statement when he came with Mrs. McCann, what he wanted to try and locate McCann.

Q. That was previous to that he made that statement?

A. Yes, sir; and that is how the conversation led up in the evening. It was me introduced the conversation with the chief in the afternoon.

Q. Were you down there in the afternoon when he and Mrs. McCann had been down there to learn about the disappearance of McCann?

A. Yes, sir.

1080 Q. You were there when he came in?

A. Yes, sir.

Q. You knew about the transaction, then?

A. I knew McCann was missing; yes.

Q. Subsequently, in the evening when he was brought in there, before he was brought in did you know he was coming—did you know he had been arrested?

A. Why, he was arrested in the chief's office, if I am not mistaken, to the best of my knowledge.

Q. So he came in there that evening himself—he and Mrs. McCann?

A. If I am not mistaken, that is the way it happened.

Q. He came and volunteered this statement in reference to McCann in the evening?

A. Yes, sir.

Q. (Mr. JOHNSTON.) You weren't there when he came in?

A. I disremember whether I was or not.

Q. You don't know whether he was brought in by detectives or not?

A. No; he wasn't brought in by the detectives; he came in by himself.

Q. Which time are you referring to?

A. In the afternoon—the first time.

Q. I mean at seven or eight o'clock at night?

A. Came down himself.

Q. Were you there when he came?

A. He came himself. During the afternoon he was requested to come there that evening.

Q. That is the reason you think he came there by himself, because he was requested to come?

A. Yes, sir.

Mr. ALBERT DAVIS, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

1081 Q. Mr. Davis, you are a practicing attorney—you have a license?

A. Yes, sir.

Q. I will ask you if you had occasion to be at Chief Desmond's office on the afternoon of the 25th or on the evening of the 25th of June of last year?

A. My recollection, late in the afternoon I went to Chief Desmond's office.

Q. What was the occasion of your visiting there?

A. I went there and saw Chief Desmonds with Mrs. McCann.

Q. Was the defendant there?

A. Not when I first went there. I went with Mrs. McCann in somewheres on Franklin avenue and Mr. Barrington and the detectives walked in to the summer garden there where we went. We went in the back way just as they came in the front way, and we all went to the Four Courts together and went to Chief Desmond's office.

Q. Who was present in Desmond's office?

A. Mr. Desmond was there and Mrs. McCann facing him on the left and Mr. Barrington and myself.

Q. Was Mr. Schmidt there and Mr. James?

A. Yes, sir.

Q. At that time did the defendant, Barrington, make any statement; and if so, under what circumstances?

A. He made the statement, as I recollect it, under these circumstances. As we came in and sat down Mr. Desmond said to him " You are not under arrest, and I am your friend. Mrs. McCann, this lady here, says that her husband has gone away and that you went with him and that you have told her that he got mixed up with a woman." I am not at'empting to repeat Desmond's exact words. Desmond said that " Mrs. McCann had said that he had got mixed up with a woman and went away with her, and afterwards you have told her that he was injured himself and that he cut the woman. I want to tell you right now, Mr. Barrington, that this department has something 1082 else to do besides hunting drunken men off on debauches with women, or if somebody has committed a crime against a woman or a woman has committed a crime against somebody else we want to know the facts." Barrington started out " I will tell you, Chief——"

Q. What was his statement?

A. That he had gone out to the Suburban Garden two miles and a half beyond, and that McCann had gone back in there with a woman, and the woman had squealed so and so forth.

Q. Anything else he said after telling this story, that you recollect now, under similar circumstances?

A. He stated about where he was that night.

Q. That is what we call the Suburban Park story?

A. Yes, sir.

Q. Were you at the chief's office on the following Saturday evening?

A. No, sir; I was not there.

Q. Did you go out there to Bonfils?

A. I did.
Q. Was the defendant there?
A. Yes, sir.
Q. What day was it you went out to Bonfils?
A. On the following Sunday.
Q. Who were you with there?
A. I went out there with Mrs. McCann, and Barrington, too; but I was down there in the quarry most of the time.
Q. Did you hear the defendant make any statement or say anything while at the quarry on that Sunday?
A. No, sir; I did not; while I was within twenty-five or thirty feet of Kiely, Desmond, and Barrington they were talking in a very low tone of voice. I expect I was within ten or fifteen feet of them. I didn't try to hear. They certainly didn't talk loud enough to reach my ear where I was standing. I was ten or fifteen feet away from them.

1083 Cross-examination by Mr. GROVER:

Q. You don't know who sent the telephone message to Mr. Barrington?
A. No, sir; I do not.

Mr. WILLIAM DESMOND, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.
A. William Desmond.
Q. What is your occupation?
A. Chief of the detective force, city of St. Louis.
Q. Were you such in June of last year?
A. Yes, sir.
Q. When did you meet the defendant, if at all, or did you meet him at your office on the 30th of June or about that time?
A. Yes, sir.
Q. What was his business at your office?
A. It was reported that a man named McCann had disappeared.
Q. And he came to your office?
A. Yes, sir.
Q. About what time of day was it that he first came there?
A. I don't recollect that. I think the first time I saw him was about supper or after supper.
Q. Who brought him there, Chief?
A. I think it was Officers Smith and James.
Q. Was he brought into your office?
A. Yes, sir.
Q. Did the defendant make any statement or say anything in your presence or to you; and if so, under what circumstances did he make this statement?

A. We spoke to him about this man's disappearance and his whereabouts, and he stated that Mrs. McCann was suffering with headache and that he and McCann went over to Compton avenue and
1084 Franklin, I think, to get some headache powders and from there he and McCann went out to the Suburban Garden and they had a couple of drinks there and they met some gentlemen there and some ladies; and I think he said that they stayed there some time and had their pictures taken there and went to the shooting gallery, and from there they went out on a trip some distance on the Suburban track, and the lady went with McCann down in a meadow and there was a noise and a scream of a lady's voice, and the men ran over there and there was a scuffle there and they beat up McCann and they beat up Barrington; and Barrington stated that the last he seen of McCann was going away in a cab with these men. That was about the substance of what he said.

Q. Was anything said about having loaned any money to McCann?

A. Yes. He said he loaned McCann $27.50, I think it was.

Q. Now, Mr. Desmond, when he was brought to your office that evening, how long did he remain in your office—were you in his presence all the time he was there?

A. All the time.

Q. After you were there talking with him where did he go—what was done with him then?

A. I sent him out with the officers to locate the place where the assault was committed, to see what became of Mr. McCann.

Q. On the following morning was he still in your custody in charge of these officers?

A. Yes, sir.

Q. What became of him the next morning?

A. He was released.

Q. When did you next see the defendant—were you at the Four Courts the following Saturday evening?

A. Yes, sir.

Q. Did you see him at your office that Saturday night?

A. I think I did.

Q. About what time was it?

A. It was late in the evening.

Q. And were you there when he was brought in?

A. I don't recollect that.

1085 Q. Do you know who it was brought him there?

A. I think it was Cabanne and some of the mounted officers.

Q. What was done with him—was he brought into your office?

A. Yes, sir.

Q. Now, who was present on this occasion this Saturday evening?

A. There were several people there. Several of the members of the press there; several police officers—Chief Kiely. The door was open; everybody was in and out; there were a good many people there.

Q. Did you have a conversation with him in your office that night?

A. Yes, sir.

Q. Who was with you when you had the talk with him that night?

A. The chief was present and the members of the press were present, and the officers were there.

Q. Did he make any statements there that evening; and if is, under what circumstances were they made?

A. What do you mean?

Q. Were they made in response to questions?

A. Just in response to questions.

Q. What did you say to him that induced him to talk?

A. I told him I wanted him to tell the truth about this matter. We were looking up this man. It was reported that he had disappeared, and if he knew anything about him we wanted to know it.

Q. What, if anything, did he say in reply to this question?

A. He told us about the same story—that that was the last he had seen of him.

Q. On that same evening did he make any further statement about it? Were you present when the street railway men were brought in there to identify him?

Q. When they had been brought in, did he make any statement?

1086 A. I am not clear on that.

Q. Do you recollect anything further that he said—any modification of his story, any changes?

A. Well, we were talking a great deal, and he declared all the time this garden business.

Q. (Mr. Grover.) Was that under his second arrest that he was telling about Suburban Garden?

A. Yes, sir.

Q. Were you there when the trunk was brought in?

A. Yes, sir.

Q. Were there any articles shown him taken from that trunk?

A. We asked him if that was his trunk, and he said yes, and took out piece by piece, clothing, paper pictures, revolver, a cane, a hat, and I think some cartridges.

Q. What did he say about the revolver, if anything?

A. I am not sure on that point.

Q. Any remarks about the cane?

A. He said the cane was Mr. McCann's cane; that McCann had given it to him.

Q. Did he say when it was?

A. The night that they were away.

Q. Did you see any jewelry there—a watch or ring or anything?

Q. Did you see it when shown to the defendant?

A. Yes, sir.

Q. Who showed him that?

A. I did.

Q. Did he make any statement about it?

A. He said he didn't know how it came there; he was pretty sure it was McCann's ring; he thought he saw it with McCann.

Q. He was pretty sure it was McCann's ring, but he didn't know how it came there?

A. Yes, sir.

Q. Did you hear him mention anything about Bonfils?

A. I am not sure on that point. I remember that he said something about meeting these men out at Bonfils, but I am not sure.

Q. You do not recollect the exact language he used in regard
1087 to that?

A. No, sir.

Q. Did he say it was the same night?

A. I wouldn't say that either, because I am not sure of it.

Q. Did he make any statement after that as to what he thought about the whereabouts of McCann—where he was?

A. He always claimed that McCann had gone away and that they would hear from McCann.

Q. Now, were you out on the following Sunday at Bonfils?

A. Yes, sir.

Q. Did you see the defendant there?

A. Yes, sir.

Q. Did he at that time say anything to you about McCann or the body that was there; and if so, under what circumstances it was said?

A. He was just questioned.

Q. Do you recollect what he said?

A. There were two bullets, I believe, and when the first was found he asked if there were any more, and somebody came down after a few minutes and he sand "Have they found any more bullets?" And that was the substance of what was said there.

Q. What was that he said?

A. After they found the first one somebody said there was another bullet found, and then he said "Was there another bullet found?"

Q. Did you go with him when he looked at the body?

A. No, sir.

Q. Do you recollect any other statement he made out there at the quarry?

A. I didn't take any notes of those things that day.

Cross-examination by Mr. GROVER:

Q. The night officer, when Barrington was taken back, the second time that he was arrested for this crime, and brought there from out about 31st and Franklin, at the Leland Hotel—that was his second arrest. Of course you don't know about that part of it?

A. I wasn't there at the time.

Q. The night that all this jewelry and stuff was shown to
1088 him was the night of this last arrest?

A. Yes, sir.

Q. And there were a great many people coming and going there at the time he was brought in and made this statement?

A. Yes, sir.

Q. You don't remember what was done in reference to the railroad men that they brought in, do you?

A. I know some of them came in and identified him as seeing him on the car going out there.

Q. Did you present them to him?

A. Yes, sir.

Q. Did you tell him what they said?

A. I just brought them in the room and asked if they could identify him and they said yes.

Q. They did identify him?

A. Yes, sir.

Q. Then Barrington broke down and cried a while, didn't he?

A. Well, I wouldn't say that he broke down and cried then; I know there were tears in his eyes some time in the evening.

Q. It was after all this jewely and stuff were brought in?

A. The jewelry was brought in before the tears came in his eyes.

Q. How long had he been there at the station before the railroad men identified him?

A. At our office?

Q. Yes.

Q. Well, I don't think he was there any length of time—maybe an hour or half an hour.

Q. Refresh your memory.

A. I don't want to say only what is right.

Q. Isn't it a fact that after the railroad men were there and had identified him the trunk was brought up from the Union station by Officer Finan, and that was along in the evening?

A. When the trunk was brought in I know it was long after dark.

Q. That was brought in and it was opened?

A. Yes, sir.

Q. Officer Finan—after Barrington had been brought down Officer Finan had been sent out to find the trunk?

A. Yes, sir.

Q. And these railroad men had been in there and had identified him before the trunk had been brought up there?

1089 A. I wouldn't say for sure about that.

(State rests as to the admissibility of confessions, statements, and admissions.)

Mr. Grover. I demur to their evidence of the second confes'ion The first I am perfectly willing to have go in.

Court. I prefer to hear all the evidence.

The defendant then proceeded to offer evidence on said issue as to the admissibility of said alleged statements, admissions, and confessions, still, in the absence of the jury as follows:

Mr. JOSEPH C. MCATEE, being duly sworn, on the part of the defendant testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. Joseph C. McAtee.

Q. You are a reporter for the St. Louis Republic?

A. Yes, sir.

Q. Mr. McAtee, did you ride down from the mounted district police station to the Four Courts at the time Barrington was under arrest—the second time?

A. I did.

Q. Were you down at the Four Courts when they were interrogating him?

A. I went in there with the prisoner and some of those people who had brought him down, but I wasn't with them when they were interrogating him.

Q. Was there any interrogation at the time you were there?

A. The chief ordered the room cleared me out and Mr. Bellairs and several others.

Q. How long were you in that office?

A. Oh, it wasn't but a short time—I guess about two min-
1090 utes—a few minutes. He just said who was this, and then said we had no business there.

Q. Did you hear any interrogation that night of the prisoner at all?

A. No; I left shortly after that.

Mr. F. SEYMOUR BARRINGTON, being duly sworn on his own behalf, as to the admissibility of confessions, testified as follows:

Direct examination by Mr. GROVER:

Q. You are the defendant in this case?

A. I am.

Q. State to the court what transpired when you were arrested at the McCann residence the second time on account of the disappearance of James P. McCann.

A. I couldn't state the exact time, but towards the latter part of the afternoon I was waiting for Mrs. McCann. She had gone out. I had received a message over the telephone that she was gone out and would be home shortly, and I was waiting for her when I saw her getting off a car opposite the house with Cabanne and Kirk. I saw her from the window and went down to the front door to meet them, and I met Kirk in the hall and he rushed at me and says, "You are under arrest," and immediately afterwards Detective Cabanne came in. Mrs. McCann was standing at the door and Leonard behind her. I was taken out—rushed out to the front of the house and up a block or so. I am not sure whether one block or two, but up to Franklin avenue and got a car there, and I was standing on the end of the car

and Cabanne and Kirk were there, and I asked them where they were taking me; if they were taking me to the central station; we were not going down town. He says to me: "You ruffi'n; you have killed your best friend, and we are going to take you to the woods, and in
1091 two or three weeks time we will string you up there." That was Dectective Cabanne said that.

Q. When he made that statement, what did you think that he had reference to?

A. I thought that he meant the woods.

Q. You didn't know of the mounted district police station being the woods?

A. I never heard of it being called the "woods" until to-day.

Q. You thought they had intended taking you out into the woods?

A. Yes, sir; I did.

Q. Now, what was their manner towards you?

A. Very rough.

Mr. JOHNSTON. We object to his conclusion.

A. They were hauling me about and speaking to me—every action showed their manner was rough.

Q. Now, what effect did that have upon you, so far as intimidation was concerned?

A. Naturally what it would have on any man.

Q. What was that intimidation, or did you feel intimidated?

A. Certainly I did, after what I had gone through.

Q. What had you gone through?

A. What do you refer to?

Q. You had gone there with the detective—police force of the city—prior to that?

A. I was arrested unlawfully for a crime I never committed. It is well known I never committed and railroaded—sent to the work house.

Mr. GARDNER. We object. The police officers had nothing to do with railroading him. It must have been Judge Tracy.

Q. That was on account of a pretended assault and battery on Mr. Cochrane?

A. Yes, sir.

Q. Did you ever assault him in your life?

A. I never did.

Mr. GARDNER. We object to all this as immaterial.

Mr. GROVER. I want to show that the man had been arrested for a crime he hadn't committed.

1092 COURT. I do not want this spread out over too much territory.

Q. You had been incarcerated by the police department before, hadn't you?

A. I had.

Q. And you were pardoned by the mayor?

A. Well, I understood it this way: After a dispensation was

granted—after the whole matter had been before the mayor—Colonel John I. Martin said he didn't want a pardon for his client; he wanted him exhonorated in the whole matter, which was done.

Q. What was your feeling, your condition, from the time these men said they were going to take you out in the woods until you went to sleep in the Four Courts?

A. I was in fear all night. I didn't go to sleep all night.

Q. You felt that you had been railroaded before, and that now you might be railroaded for murder; is that the idea?

A. It is.

Q. Now, after you got down to the Four Courts, tell what took place down there—the second confession we have been talking about?

A. Something happened in the car before that. While Cabanne went away, Kirk and I were there, and he said, "You tell us all you know about this, and if anybody else is mixed up in it we will allow for that and that will make it lighter for you."

Q. Where was that?

A. At Sarah or Union, I don't know. It was one of the places where the car stopped. It was somewhere between Franklin and Union.

Q. Describe the scene down at the Four Courts.

A. As soon as I got to the Four Courts, which was about 9.30 in the afternoon, there was a large crowd assembled there. The patrol wagon was filled with officers and reporters. I was hauled
1093 into Desmond's office, where I was kept till 2 o'clock in the morning, not leaving once. As soon as I was seated, question after question was put to me, one after the other—Desmond most all the time, but others would chip in, "You are telling a lie. Wasn't it so-and-so; wasn't it so-and-so. The chief said so."

Q. It was in a high state of excitement, the whole office?

A. Naturally so.

Q. Newspaper men there?

A. Yes, sir.

Q. Were they firing these questions, too?

A. I can't say newspaper men or who they were. The railroad men were brought in the office and told me to turn around and look at them, and I turned around and someone says—I don't know who—"There's the man saw you go out on the car, and this man saw you come home in the morning; what have you got to say to that." There was more than that said, but I don't recollect it all just now.

Q. Did you at any time while you were there break down and cry?

A. I believe I did. I wouldn't be positive of that. I have some remembrance of it.

Q. You may state whether or not any of those statements you made there were made voluntarily?

A. Not a statement I made was voluntary. I admit they were made in reply to questions.

Mr. JOHNSTON. I object. It is for the court to say whether they were voluntary or not.

Q. You never made a statement of your own free will?
A. I did not.
Q. That is all.

Cross-examination by Mr. JOHNSTON:

Q. What is your name?
Mr. GROVER. I object. The first question I asked him was, Are you the defendant in this case, and he said "Yes."
1094 A. I decline to answer. I reserve my constitutional rights not to incriminate myself.
COURT. Objection sustained.
Q. How many names have you gone by?
Mr. GROVER. We object to that for the same reason.
A. I decline to answer it for the same reason.
Q. What is your name?
A. I have never used any name but the names I have now.
Q. (COURT.) Do you decline to answer?
A. I decline to answer.
Q. When did you arrive in St. Louis?
Mr. GROVER. We object.
COURT. Objection sustained.
Q. You spoke about being arrested for assault. How did you come to be arrested for assaulting anyone?
A. By conspiracy.
Q. On whose part?
A. Those that were interested in the case, that has been shown, and I got a dispensation in the case.
Q. Do you know who they are?
A. No. I know one of them.
Q. Who was it?
A. I don't want to cast any reflection upon anyone else.
Mr. GROVER. We object. That has nothing to do with the point before the court now. I will withdraw the objection.
A. James Cochrane, if you want to know.
Q. Who else?
A. I know that to be one.
Q. Do you know any others?
A. I can't say for certain.
Q. And where was it that this trouble took place?
A. 4368 West Belle place.
Q. Tell the circumstances of it?
A. Well, the first I knew of it was when it took place at 4368 West Belle place, and that I think was on a Saturday night. The last Saturday in January. I am positive about the date.
Q. You had represented yourself to Miss Cochrane as being Lord Frederick Seymour Barrington?
1095 Mr. GROVER. We object to that.
COURT. Objection overruled.
(To which action and ruling of the court, defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Did you not represent to Miss Grace Wilhelmina Cochrane that you were Lord Frederick Seymour Barrington?

A. No; I did not. Never to anyone in my life. If you can bring anyone on this stand to whom I have represented myself as Lord Frederick Seymour Barrington, I should be glad to meet him.

Q. Did you say that you lived formerly in Balmoral Castle, in England?

A. I did not.

Mr. GROVER. We object to that.

A. That has done me more harm than anything else.

Q. Weren't you taken sick at this house on West Belle, and didn't you write on a card, "Lady Barrington, Melrose Castle, England;" and then didn't you hand that to Miss Cochrane and tell her, "That is my mother's name; send her word if anything happens?"

Mr. GROVER. We object.

COURT. Objection sustained.

A. I am perfectly willing to answer that.

Q. You have heard the statement there that Chief Desmond and other officers said on the occasion of your first arrest when you were brought in his office, about being at the Suburban Garden?

Mr. GROVER. We object. We are trying the fact of whether he made any statements or not, and whether they were made voluntarily.

Q. I will ask you if you didn't make a statement Friday
1096 morning, the 19th, when you came back to the Leland Hotel—if you didn't tell Charley Morrison and Oney Morrison about being at the Suburban Garden?

Mr. GROVER. We object.

COURT. Objection sustained.

Q. Didn't you make that statement to Chief Desmond about being out at Suburban Garden and meeting two men and two women there and having a fight there, and you being knocked down and left in the gutter?

Mr. GROVER. We object.

COURT. Objection sustained.

Q. Now, didn't you make the same statement on a Saturday evening as to the Suburban Garden as you made on Thursday when you went voluntarily to Desmond's office?

Mr. GROVER. We object for the same reason.

COURT. Objection sustained.

Q. Now, you say there was some one, when the railroad men were brought into Desmond's office, said "There is the man saw you going out and there is one that saw you coming back." Who were those men?

A. I couldn't say, there were so many. I know the remark was made, and I suppose there were twenty or thirty others know that remark was made.

Q. You don't know them?

A. I don't know their names.

Q. You remember being at the chief's office on Thursday afternoon with Mrs. McCann?

Mr. GROVER. We object.

COURT. Objection sustained.

Q. Now, you remember the Sunday morning that you left for Bonfils?

A. I didn't leave on Sunday morning for Bonfils.

Q. Well, you went out there.

1097 Mr. GROVER. We object to that as not cross-examination.

Q. On the morning that you went with the sheriff to be taken out there, on that Sunday morning, didn't you thank Chief Desmond for the kind and courteous treatment that he had shown you?

Mr. GROVER. We object to that as not cross-examination. I will withdraw the objection.

A. I have answered the question. I did not go out to Bonfils on Sunday morning.

Q. On the 28th?

A. No; not on Sunday morning, the 28th.

Q. Well, did you go in the afternoon?

Mr. GROVER. We object to that as immaterial and not cross-examination.

COURT. Objection sustained.

Q. Well, did you not thank, on Sunday, Chief Desmond, for the kind and courteous treatment he had shown you?

A. I have no remembrance. I don't recollect it at the present time. I do not say I did or did not.

Q. That is all.

Mr. JOHNSTON. We will call Officer Kirk in rebuttal.

Officer PATRICK KIRK.

Direct examination by Mr. JOHNSTON:

Q. I will ask you if on the occasion you were in charge of the defendant, taking him to the mounted district police station while he was alone with you, Mr. Cabanne being absent, you remarked to him that he had better tell you all about this thing and if there
1098 were any others mixed in it "We will get them, too, and it will be easier for you?"

A. No, sir.

Q. Did you hear any inducement made to get him to talk?

A. No, sir.

Cross-examination by Mr. GROVER:

Q. Did you state anything to him there at all about there being anybody else implicated in it?

A. No, sir.

Q. Do you remember the number of the car that you were in that morning?

A. No, sir.

Q. Do you remember the number of the car you were in that morning?

A. No, sir.

Q. Do you remember the conductor that was on the car?

A. No, sir.

Q. Didn't you state after you got off of the car also, that you were anxious to find if there was anybody else implicated in this thing?

A. No, sir.

Q. You never made any statement of that kind?

A. No, sir.

Q. What were your statements in conversation with him as you went out there?

A. Joking most of the way in the wagon to the station. Barrington was laughing himself.

Q. Didn't he make any statement to you at all?

A. About the occurrence at Suburban Garden he did. After he made that statement he was joking.

Q. And you got off at Sarah street?

A. Changed cars at Sarah street.

Q. Got off there at Sarah and you didn't make any statement to him at the time you got off at Sarah about anybody else being implicated in this matter?

A. No, sir.

Q. You didn't try to ascertain from him whether anybody else was implicated in this matter?

A. No, sir.

1099 Q. Either at that time or any other time?

A. No, sir.

Q. (Mr. GARDNER.) You say he was laughing and joking after he made the statement about this other matter?

A. Yes, sir.

Mr. GROVER. Now, we object to the second confession, because there is no foundation laid for it and because it was voluntary. We object to everything but while he was under the first arrest; I don't object to that going in, but all this side show down at the police station, I object to it, and all these other statements.

COURT. Mr. Sheriff, bring in the jury.

(Jury brought in.)

COURT. The objection as made to the evidence will be overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. That will do.

* * * * * * *

1382 Cross-examination by Mr. GROVER:

Q. Mrs. McCann, when and where were you first married?

A. In Canada, on July 14th—Windsor, Canada.

Q. That is in the province of Ontario?
A. Yes, sir; I should judge so.
Q. And that is the first time you were ever married?
A. My first time in life; yes, sir.
Q. Your maiden name was Jennie Calloway?
A. No; it was Jessie Clayton Calloway.
Q. Isn't it a fact your maiden name was Jennie Calloway and you changed it to Jessie Calloway after you met McCann?
1383 A. I did not. I never had a name until I named myself. My first name was Emma Proctor, a friend of my mother's gave me. I had no name from that time on and I named myself Jessie. That is a family name. The whole family has a Jessie, and I named myself.
Q. Your father and mother named you Jennie, didn't they?
A. No, sir; they named me nothing.
Q. They are living now in Kentucky?
A. They are living to-day.
Q. You had no name?
A. I had no name. I had several names. Anything that anyone choose to call me in the family, and I named myself Jessie Clayton.
Q. Didn't you go under the name of Jennie until you commenced to go under the cohabitation of James P. McCann?
Mr. JOHNSTON. We object to that as immaterial.
A. I did not.
COURT. Let that stand.
Q. When and where were you married to Mr. Harry Lemping?
A. Never.
Q. Do you know such a man as Mr. Harry Lamping?
A. Yes, sir.
Q. He lives in Vicksburg?
A. Yes, sir.
Q. A cotton broker?
A. Yes, sir.
Q. Did you ever live with him?
A. Never.
Q. Were you ever married to a man by the name of Leland?
A. No; I never saw a man by that name.
Q. Do you know Mr. A. Ghastley, of Cincinnati, Ohio?
A. I know him.
Q. Did you ever have any relation with this man Lemping at the same time that this man from Cincinnati, Ohio, was around with you considerably?
A. Never.
Q. Then you were never married to anybody on earth but James P. McCann?
A. Never married on earth but to James P. McCann.
1384 Q. That was at Windsor, Ontario?
A. Yes, sir.

Q. Did you take out a license?

A. Mr. McCann did; I didn't.

Q. Were you married by a minister of the gospel or by an officer?

A. By an officer. I couldn't tell you his name.

Q. What kind of an officer?

A. A magistrate or justice we term there here; I don't know what they term them there.

A. Was a regular marriage ceremony performed at that time?

A. According to my idea, there was.

Q. What was this ceremony—what was the nature of that ceremony?

A. I met Mr. McCann in Cincinnati, Ohio. He proposed to me four or five times. Finally I agreed to marry him. He told me that he had a great deal of notoriety through a divorce from his first wift and had a sweetheart in Cincinnati; gave him trouble. "Now, if you are willing to marry me, as I have my horses there and races going on there, we will go and be married"——

Q. At what place?

A. In Canada. And we took the train in the morning and arrived at Windsor, Canada, on the night of the same evening.

Q. Took the train in the morning?

A. Yes, sir.

Q. And arrived that night at Windsor?

A. Yes, sir. We took a carriage at the ferry. The man who was in charge of the carriage, whether the driver or not, says "Is this Mr. McCann?" He says "I am;" and we took the carriage and drove to a private residence at that place, where we were married. At least, they told me it was a marriage office, and he asked us if we would take one another for man and wife, which we agreed to do. And then we took the carriage and returned back and took the train and went back to Detroit, Michigan. We went to the Russell House and tried to procure rooms, but we couldn't, and we went to the Catalasa, and couldn't get them there, and went to the Wayne, and from the Wayne back to the Catalasa, and Mr. McCann
1385 had stayed there ten years before that a number of times, because he had raced his horses frequently there.

Q. Did he have any horses there then?

A. Yes, sir.

Q. What horses?

A. Cherry Rose, Flora Daniels, Henry's Sister, Evoia, and before he left there he purchased others.

Q. You went to Windsor. You left Cincinnati in the morning, and you arrived at Windsor, Canada, at night?

A. We left Cincinnati in the morning, and we reached Windsor, Canada, in the night—Detroit, Michigan, in the evening.

Q. What time did you get there to Canada?

A. I wasn't impressed with the hour. I was impressed with what I was doing in going to marry Mr. McCann.

Q. You don't know what hour it was?

A. Certainly not. I didn't consider the hour.

Q. Do you know what hour it was?

A. I do not. I knew I was Mrs. McCann; that was all I cared for. I didn't consider the hour, whether seven or eight. That was the least consideration with me at the time.

Q. Then, you left there when you were married and came down to Detroit the same night?

A. Yes, sir.

Q. You left the same night for Detroit?

A. Yes, sir.

Q. Then, where did you go the next day?

A. We stayed in Detroit till about twelve, then went down to the Catalasa Hotel, had lunch, and a carriage down to the ferry, had the carriage ferried over with us, and drove in the carriage to the Windsor House direct.

Q. That was the second time you were in Windsor?

A. Yes, sir; at that time.

Q. And then what day was that?

A. The following day after my marriage.

Q. What day were you married on?

A. I was married on July 14th. As to what day I could not state.

1386 Q. In what year?

A. 1900.

Q. July 14th, 1900?

A. Yes, sir.

Q. How far is it from Detroit to Windsor?

A. Just across the river.

Q. And how long did you remain there at the race track after this marriage?

A. I think about two and a half months; I wouldn't be positive.

Q. Remain there constantly?

A. Yes, sir.

Q. At the time you were married was the marriage license taken out and exhibited to the officer that married you?

A. Yes, sir.

Q. And he took the license and performed this marriage ceremony?

A. The ceremony was performed as ceremonies are performed with people who are being married, according to my judgment as to how they are performed.

Q. Now, when you left Cincinnati he didn't have any horses down there then?

A. He did; had the same in Cincinnati.

Q. How many race horses did he own at that time?

A. He owned several. He had them under different persons' jurisdiction.

Mr. JOHNSTON. We object to this as irrelevant and encumbering the record.

Q. Now, when you and Mr. McCann got there across from Windsor, Canada, the carriage was in waiting and you were carried over to Windsor, Canada?

A. No, sir; we took a carriage and went from the train to the ferry and then took the boat and went over to Windsor, Canada, and then the carriage was in waiting there for us.

Q. Another carriage?

A. Another carriage.

Q. Now, when you arrived there that day did Mr. McCann and you meet anybody that either he or you knew before you got finished your ferry trip?

A. Not to my knowledge.

Mr. JOHNSTON. We object to that as irrelevant and immaterial.

1387 A. No, sir; not to my recollection. We met nobody. I wouldn't be positive, but to my recollection we didn't.

Q. As soon as you got in the carriage you were driven to this magistrate's house?

A. No, sir; as soon as we got in the carriage we were driven to the ferry and we took a boat and crossed the ferry and met the carriage on the other side there in waiting for us and were driven to this residence, where the marriage ceremony was performed.

Q. Did he meet anybody from that on?

A. He did not, other than the parties who married him. The carriage driver seemed to have known him. He asked if this was Mr. McCann, and the arrangement had been made before we reached there for this ceremony performances. Mr. McCann told me so.

Q. When you went in to have this ceremony performed, did McCann take the license out of his pocket?

A. He did.

Q. Out of his own pocket?

A. Yes, sir.

Q. You had not been at the court-house before that?

A. I hadn't.

Q. Had Mr. McCann?

A. I don't know where he procured the license from, whether there or not.

Q. You say after you were driven over on the ferry you were driven to a private house?

A. Yes, sir.

Q. Had he been to the court-house?

A. He was in Windsor a few days previous to that.

Q. He had asked you to marry him several times and now he said, "Come on and go up there and be married," and that was the first time you accepted him?

A. I didn't say how many times I had accepted him.

Q. Isn't a fact you said that was the first time you had accepted him?

A. I did not.

Q. Isn't it a fact you went to Windsor, Canada, over there, because you knew you were married at that time to another man?

A. No, sir; it is not a fact.

1388 Q. How long had you known Jim McCann?

A. I can't state—a number of days, but I suppose probably nearly a month.

Q. That is when he married you?

A. Yes.

Q. You hadn't known him any longer than that?

A. I had not.

Q. You met him in Cincinnati, Ohio?

A. No, I did not. I met him at the Latonia races in Kentucky.

Q. Whereabouts?

A. At the Latonia race track.

Q. That was within the last month?

A. During the time I had met him.

Q. You never had any trouble with Jim McCann in Cincinnati, Ohio?

A. None whatever.

Q. Did you own any race horses then yourself?

A. No, sir; I never had owned any.

Q. Know nothing of Jim McCann getting in trouble in Cincinnati, Ohio, with a woman on account of the race horse business, in which he was arrested for selling a race horse at that time?

Mr. JOHNSTON. We object to that as not part of the resgestae in this case.

COURT. Objection sustained.

Mr. GROVER. I wish to state right here that my purpose is to commence with Jim McCann and also with Mrs. McCann at Cincinnati, Ohio, and come on down to date, or to the time Jim McCann disappeared, to show that their relation was an illicit cohabitation; to show that they were both engaged in fraudulent transactions continuously, and for the purpose of showing that it may be that this matter out at Bonfils may be the result of fraudulent transactions in one of the series in which the two have engaged for a number of years.

1389 COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Did you ever have Jim McCann arrested?

A. Never in my life.

Q. Did you ever have any trouble with him?

A. Never in my life.

Q. Did he ever strike you?

A. Never.

Q. Give you a black eye shortly before he disappeared?

A. Never; no, sir.

Q. Didn't he use to curse and abuse you and tell you that he intended to kill you some of these days?

A. He never cursed me or abused me—never. Never said he would kill me in his life.

Q. Never said in a drunken rage, "Jessie, you haven't got a chance to live?"

A. He never has said that to me.

Q. Isn't it a fact that he gave you a beating up there in the Leland Hotel three or four weeks before he disappeared?

A. He never did.

Q. He never beat you up at any time?

A. He never beat me up; no, sir.

Q. Now, when Barrington came out and asked for the headache powders in front of the Leland Hotel, was Tom Leonard there?

A. I wouldn't state positively if he was there at the time. I don't think he was, but I wouldn't state positively whether he was or was not at the time Mr. Barrington asked for the headache powders.

Q. And it was right after he asked for the headache powders that McCann and Barrington went away together?

A. I said I had a headache and Mr. Barrington asked me for powders and I said I had none, as I had already told Mr. McCann and Mr. McCann said he could get some, but whether Mr.
1390 Leonard was present then I couldn't say, but he was present when they left the house.

Q. How long is it from the time that Barrington came out and said that until Leonard came?

A. I couldn't say positively. I didn't consider Mr. Barrington or Leonard particularly, and he might have come out right afterwards; but Mr. Leonard was not present when I gave Mr. McCann the $5 gold piece, but Mr. Barrington was.

Q. After you gave him the $5 how long was it until they left?

A. Long enough for Mr. McCann to go over to the saloon across the street and get the returns on the races, buy some cigars, and present them to the others, and he lit the other cigar and lit his and says, "Fred, come with me."

Q. Tom Leonard was present, then, when they came back?

A. He was present when Mr. McCann came back from the saloon.

Q. He was there when McCann and Barrington went away?

A. Yes, sir.

Q. And he was present when McCann turned around and said, "Tom, take care of Jessie until I come back?"

A. Yes, sir; and he said, "I will see that nobody steals her." And then Mr. McCann said to me again, "Jessie, I won't be gone but a few minutes," and I said, "Please hurry back, for my head really aches," and those were the last words he ever spoke to me, and the last I saw him alive.

Q. It was five or ten minutes between the time he went after the cigars and came back until the time he left?

A. Long enough to go over and buy the cigars, present them to the others, and light them.

Q. Then, Tom was there?
A. He was there then.
Q. Where was it they went after the cigars?
A. Across the street to Jackson's saloon, opposite our house.
Q. What time was it they left for good?
A. I think it was between 7.30 and 8 o'clock.
1391 Q. Was it dark?
A. Pretty nearly dark. You know as we all know about that season of the year, whether it is dark or light. I didn't look at the darkness or the lightness at that time.
Q. Now, before McCann left there that evening how long had he been sitting out there in front?
A. Since he had suggested to me or had told me that we were invited by Mr. Barrington to take dinner with some English friends of his in the country—from the time he told me that and what to wear; and I went in and was partially dressed, and then Mr. McCann came in and told me that I need not dress, and we went out there then in front—I couldn't say the hour.
Q. Was Mr. McCann sitting out there?
A. When I went out I found him there.
Q. Was Barrington there then?
A. He was there.
Q. Who else was there?
A. Nobody but myself, and I appeared on the scene.
Q. You spoke in your direct examination about having a business and an office down in the Temple Building; what was the nature of that business?
A. Good.
Q. What kind of business was it?
A. A corresponding club or a matrimonial bureau, whichever you choose to term it.
Q. It is a matrimonial bureau?
A. That is all the same thing.
Q. That is, you run a bureau for the purpose of marrying people?
A. I do, and I marry them.
Q. How long have you been engaged in that business?
A. I can't say positively. I began in that business in St. Louis in November or December, and I have run it from that day since in St. Louis.
Q. Were you ever engaged in business before?
A. For a short while.
Q. Where?
A. In Chicago.
1392 Q. That was a matrimonial business there, too?
A. It was the same as I have here.
Q. This matrimonial business that you ran in Chicago and are running in St. Louis is one of the largest on the United States?
A. It is not, in my judgment.

Q. Would you think that that business that you run down there is one of the greatest of the kind in the country?

A. I don't know that it is the greatest, but I think it is the best.

Q. It is one of the greatest in the country?

A. Well, I couldn' say that positively. There may be some greater and some less, but I think mine is the best. I couldn't judge as to the greater.

Q. Now, what is your business called? In what name do you conduct it?

A. The Leland Directory.

Q. Why do you use that name, the Leland Directory?

A. Because I like it, for one reason.

Q. That is one of your circulars?

A. It was one. I used it one time, probably. I use a great many of them.

Q. In St. Louis?

A. Yes; in St. Louis. Let me look at it.

Q. Look at it.

A. I have used that.

Q. It says there—read what the head of this says?

A. It is not necessary. I know the head of it without reading it.

Mr. GROVER. Then I offer it to the jury.

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Now, you say that you sent this out?

A. I didn't say I sent that out.

1393 Q. Didn't you say you sent that out?

A. I said probably I did.

Q. Don't you state and haven't you advertised to the world that the Leland Directory is the World's Greatest Corresponding League?

A. Well, you know things can be great, but in a different sense of the word. It may be greater as to the number of correspondents, but not be greater as to the quality.

Q. The nature of the business that you advertise is that it is one of the greatest?

A. It is owing entirely to what the greatness means.

Q. Now, I will have you look at this little book here, the Leland Directory.

A. I have it with me.

Q. And you use that and send it out in your business?

A. I do.

Q. In this business here in the city of St. Louis?

A. No, not here in the city of St. Louis; they come and consult me at my office here. I don't have to solicit here.

Q. You send them out through the mail?

A. I do.

Q. You never advertise in the St. Louis papers?
A. No; they come and consult with me.
Q. But you do advertise outside a great deal?
A. Yes, sir.
Q. Isn't a fact that if you advertise close to here they raise complaint about it?
A. They have never raised a complaint.
Q. You never have had any complaint of any kind?
A. Not in St. Louis.
Q. In Chicago?
A. Never.
Mr. JOHNSTON. We object to that as not part of the res gestæ and has no bearing on the case.
COURT. He may show in a general way the nature of the business.
Q. You never had any complaint in Chicago?
A. I never did.
1394 Q. Isn't it a fact that the post-office inspector, Dias or Piatt, came down to investigate about your business—came down there to investigate about your business, and after examining for some time finally demanded an examination of your books, and that you afterwards agreed to make a change in your business to satisfy the postal service?
A. Mr. Dias never entered my office.
Q. Mr. Piatt did?
A. He sent two clerks to my office and I was glad they come, and I showed them all my papers as far as I could that evening. I couldn't show them my pile, and they told me to go before Chief Dias; and the next morning I took him those papers and showed them to him, and he says, "Mrs. McCann, go back and conduct your business as you have done before. I find no charge against you."
Q. Did he make any change?
A. I did, in the letters of inquiry.
Q. Didn't he demand a change?
A. No, sir.
Q. You didn't make any change on account of their demand?
A. They never asked me to make any change in my business.
Q. What was the name of this matrimonial bureau that you ran in Chicago?
A. The Bell Advertising Agency.
Q. And you say that you never had any complaints about that?
A. I did not.
Q. I will ask you if it is not a fact that a warrant was sworn out against you in the city of Chicago on account of your conducting a fraudulent business—wasn't there a warrant out for your arrest and turned over to Officer Woodridge there, and to avoid arrest in that way you left Chicago, isn't that true?
A. It is not true. I never was arrested.
Q. Wasn't there a warrant gotten out for you?

A. There never was. Those things are all untrue.

Q. I will ask you if that is one of the circulars of the Bell Advertising Company?

A. It may be.

1395 Q. Who was connected with you in this business in Chicago?

A. Mr. Dearborn.

Q. Anyone else?

A. No, sir.

Q. Wasn't Mr. McCann?

A. No, sir.

Q. Who was J. S. Main and Company?

A. That was an assumed name I carried at that time.

Q. You carried the assumed name of——

A. I did. I had reason for it.

Q. Look at this paper and see if that was an application made to you by a person wanting to find a husband?

A. It was. That is in the lady's own handwriting.

Q. And this is your reply?

A. No, sir; it is not my reply. That was my letter to the lady, and there is her reply on the back.

Q. This name Mann here, you signed that?

A. That should have been Main. I didn't sign it; I had my clerk to.

Q. This paper is marked "Exhibit II." This business in St. Louis is Mrs. J. C. Leland?

A. Yes, sir.

Q. Isn't a fact that Officer Piatt, of the Post-Office Department, when he came down to see you he asked you what your name was and you wouldn't tell him?

A. At that time I told him J. C. Leland. I acknowledged the name.

Q. Isn't it a fact he tried to find out what your name was, and he never did know your name was McCann until after Jim McCann disappeared?

A. I wouldn't say he tried to find out. He came and wanted to see Mrs. Leland, and I said, "This is Mrs. Leland." If he tried to find out anything different from that he never reported to me.

Q. Do you say you were married to James P. McCann?

A. I was.

Q. Now, I will ask you if you ever made a statement or said
1396 to anybody in the city of St. Louis that you were a widow and not married?

A. I never did.

Q. This Bell Advertising Agency, did that have any connection with the Armstrong, Baldwin Company?

A. None whatever.

Q. What was Armstrong, Baldwin?

A. It was some kind of a turf business. The nature of it I couldn't explain. I couldn't say positively what it was. I know the Leland

Advertising Company had nothing to do with the Armstrong, Baldwin Company.

Q. Who ran the Armstrong, Baldwin Company?

A. Mr. McCann and Oscar Wells.

Q. It was a kind of a turf commission business, wasn't it?

A. Something on that order. I couldn't state positively. It wasn't any of my business and I didn't look into it.

Q. Isn't it a fact that when this matrimonial application came into the Bell Advertising Agency, the parties applying for husbands or wives—saying what property they had and so on—were sent circulars of the Armstrong, Baldwin Company?

A. No, sir.

Q. Weren't the addresses of the Bell Advertising Agency turned over to the Armstrong, Baldwin Company?

A. No, sir.

Q. Mr. McCann was arrested in Chicago for this Armstrong, Baldwin business because it was fraudulent?

Mr. JOHNSTON. We object to that as immaterial and irrelevant.

COURT. Objection sustained.

Mr. GROVER. I want to show that this Armstrong, Baldwin Company was a fraudulent turf affair. Jim McCann was connected with it, and Mrs. McCann, through this Bell Advertising Agency, was connected with it, and it was a series of frauds from start to finish. Jim McCann was arrested and prosecuted and fined for running it and his business broken up, and Mrs. McCann was ordered to quit her business and leave town.

Mr. JOHNSTON. We object.

COURT. Objection sustained.

1397 Q. Was Mr. McCann arrested in the city of Chicago under any charge?

A. He was.

Mr. JOHNSTON. We object, and ask that that be stricken out.

COURT. Objection sustained. The answer may be stricken out.

Mr. GROVER. My position is just this; that this was a fraudulent business that Jim McCann run, and he made from 300 to 500 enemies by doing so; that there were over 200 complaints inside of a month in the city of Chicago on account of it. Some of the parties that were mixed up in this in one way or the other sent threatening letters to Jim McCann. Some demanded money from him, and if this was Jim McCann's body that was found at Bonfils I have a right to show that he had enemies and that some one who was his enemy may have killed him. I have a right to show this man's nature, character, and business. Here is a body found at the Bonfils quarry, and there are differences of opinion about the identity of the body, but if this is the body of McCann he may have been killed by some of his enemies, and I want to show how he made these enemies, and before we get through with this case there will be considerable evidence along that line. I don't think that that was Jim McCann's body, but that is one of our theories of defense.

Q. (COURT.) What is the question?

Q. Was Mr. McCann arrested in Chicago on account of running a fake turf-commission business?

COURT. Objection sustained.

(To which action and ruling of the court, defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Was he arrested for running the Armstrong Baldwin Company in Chicago?

1398 Mr. JOHNSTON. The same objection.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel then and there duly excepted and at the time saved exception.)

Q. Isn't it a fact that James McCann had enemies on account of the running of this Armstrong, Baldwin Company.

Mr. JOHNSTON. We object.

COURT. Objection sustained.

To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.

Q. I hand you several papers here that are connected together and ask you if that is the literature of the Armstrong Baldwin Company?

A. I never saw one of those papers in my life.

Q. Exhibit 12. Do you know anything about James McCann having a bitter enemy in Cincinnati, Ohio, who was a woman, and she became his enemy about this time that you say that you got married to him?

Mr. JOHNSTON. We object to that as immaterial.

COURT. Objection sustained.

(To which action and ruling by the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. You say there was no warrant out for you in the city of Chicago?

Mr. JOHNSTON. We object. The warrant shows nothing.

COURT. Objection sustained.

Mr. GROVER. I want to show that she got into trouble in Chicago on account of fraudulent conduct in business, and that a war-

1399 rant was issued for her and she so compromised in this way that she quit the business and left.

COURT. She has answered in regard to that already.

Q. You never have had any trouble on account of fraudulent business?

A. No, sir; never.

Q. You know Officer Woodridge?

A. Yes, sir; I have seen him.

Q. Did he ever come to you to see about this business?

A. He did come to my office and he says, "Mrs. Main, what kind of a business are you running?" I says, "I am running a legitimate business." And he says, "Are you running it as Mr. McDonald is running his?" I says, "I don't know how he is running his, I am

running mine legitimately." He says, "Mrs. McCann, we all got to live." I said, "Why certainly, Sergeant, I am living." He says, "I am living very poorly, and now, in a nice quiet way, you give me $50.00 and you run your business twenty years if you want to." And I says, "I have no $50.00 for you," and that is what I said to Mr. Woodridge.

Q. Did he swear out a warrant for you?

A. If he did I never saw it.

Q. You never saw the warrant?

A. Policemen can't stop my business, they have no authority.

Q. Did you continue it after this?

A. I did, and when I got ready I quit. Quit when I choose to.

Q. You have a large list of people on your matrimonial list?

A. A large list I certainly have.

Q. How many have you got in Mexico?

A. I can't tell.

Mr. JOHNSTON. We object to that as irrelevant and immaterial.

COURT. Objection sustained.

Q. Have you got any?

A. I have.

Q. Have you got any in Canada?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

1400 (To which action and ruling of the court defendant by counsel then and there duly excepted, and at the time saved exception.)

Mr. GROVER. I want to show the business is fraudulent that is conducted now.

COURT. You can show that her business is not legitimate to test her credibility as a witness.

Q. When applications are made to you by people that want to get married, you send them pictures?

A. I do not.

Q. Don't you ever send out any pictures?

A. I do not.

Q. Pictures of men or women?

A. Two or three women gave them to me, requesting it. Whenever it is required and they request it, I do.

Q. You have in what is called stock pictures?

A. I never have; no, sir. I don't carry pictures.

Q. How many people have gotten married through your agency?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

Q. Now, Mrs. McCann, how long did you look at this body out at Bonfils?

A. Long enough to know it was Mr. McCann's.

Q. How long did you look at it?

A. I knew it was his by the time I got near enough to the body to realize that it was a body, and I looked at him long enough to know it

was him; from the time I got a good view of the body I knew it was him.

Q. Did you notice any marks on him?

A. No, sir; I didn't look for them. They were there.

Q. You didn't see any?

A. I didn't look for them.

Q. How do you know?

A. By the contour of his head, shape of the head, neck, and shoulders and his teeth; the front teeth being a little protruding. I knew it was him.

1401 Q. Did you ever have any of those teeth in your possession?

A. No; I never had any of them.

Q. Did you ever go to anybody with those teeth to see if they were teeth that were filled for James McCann?

A. No, sir.

Q. Mr. McCann went under several different assumed names?

A. No, sir.

Q. Did he ever go under the name of James P. Dudley?

A. It seems he did, judging from the report when he had the teeth made; but I didn't know it.

Q. Did he ever go under the name of Armstrong?

A. He was running that business as Armstrong, Baldwin, but I didn't know anything of the business. It may have been Anderson's, but as to what he called himself in the company I didn't know. That may have been the title given to the company.

Q. Didn't he sign his name James P. Armstrong?

A. Not to my knowledge.

Q. Isn't a fact when you went out there the first day to identify that body that you would not go down to it?

A. It is not a fact.

Q. Didn't you turn back on the way out there?

A. I turned back when I was requested by the officers.

Q. Well, when you turned back you didn't turn around to any officers and say, "I don't thank you for bringing me out here, and I am going back to town?"

A. I never used any such expression. I have used no such words at all.

Q. Not to any of the officers?

A. I did not; that is an untruth.

Q. You didn't state to Officer Ball or in his presence when you went out there on the first day to Bonfils—when you met the officers and they showed you these shoes—you didn't state to Officer Ball that you didn't thank him for bringing you out there?

A. I don't know Officer Ball.

Q. To any officer?

1402 A. I never made any such statement to anybody.

Q. It was the next day after that that you went out there to identify this body?

A. Yes, sir.

Q. And you went up there and looked at it?

A. I did.

Q. And isn't a fact you simply walked up within a few feet of it and glanced at the body and turned around and said "He was the sweetest man," and turned to walk away from the body?

A. No, sir; I did not do that.

Q. That never took place?

A. That never took place.

Q. Isn't it a fact that you just went up there and gave one short look at that body and turned to go away, and as you turned to go away Mr. Leonard was with you, and as you turned to go away Mr. Ossenfort, the sheriff, or deputy sheriff, and others—or one of the sheriffs, asked you to come back and identify that body, that that identification wasn't sufficient?

A. I never walked up to the body and took a glance at it; I walked up and looked at the body until I couldn't look, and the parties who were with me, Mr. Leonard and Mr. Church, took me away. The parties came to me and said "Mrs. McCann, you must go back and look again," and I says, I will go, and they said "She can't," and I said "I can if you want me to," and they said "No; it wasn't necessary."

Q. Isn't it a fact that an altercation took place there between Church and Leonard on one side and some of the officers on the other about trying to get you to go back and look at the body, because the identification wasn't sufficient?

A. I couldn't say, I wasn't capable of listening. My mind wasn't on their business; it was on the body of my dead husband.

Q. What teeth did he have in when you saw him there?

A. He had his front teeth in.

Q. All the front teeth?

A. His front teeth.

1403 Q. Four front teeth?

A. More or less. I saw some teeth—I didn't count them. My disposition then wasn't to count. I realized that that was Mr. McCann's body and it naturally broke my heart.

Q. Isn't it a fact some of the newspaper men asked you to go back and identify the body?

A. No, sir; if they did I never knew it.

Q. Did Oney or Charley Morrison go out there to identify the body?

A. No, sir; they did not.

Q. Were they there the night of Barrington's second arrest?

A. I didn't see them; I understood Charley was there.

Q. All that time you were at the Four Courts that Saturday night you didn't see Charley Morrison down there?

A. No, sir; I did not.

Q. When the officers came up there to get you to go down to the Four Courts what time was that in the afternoon?

A. I couldn't state the time; I think it was nearly about five o'clock—earlier or later—I wasn't considering the time.

Q. Where was Barrington at that time?

A. He had been arrested and taken from the house; I couldn't tell where he was.

Q. The only way that you can identify these clothes is by general appearance, isn't it?

A. No, sir.

Q. How else?

A. I selected the goods when they were bought and compared the goods with samples where they were bought and saw them fitted and was the judge as to how they were fitted.

Q. How large a man was James McCann?

A. I couldn't give you his measurement, but he weighed 209 pounds.

Q. Have you a picture of James McCann?

A. I have.

Q. Where is it?

A. I have two at home; one made 24 years ago and one 17 years ago.

1404 Q. Have you any others?

A. No.

Q. No other pictures of James McCann?

A. No other pictures of James McCann.

Q. He never gave you a picture in Cincinnati?

A. No, sir; he never gave me a picture in his life.

Q. Did you talk with Iney Morrison and Charley Morrison about this business while Barrington was relating these various things to you that you testified to?

Mr. JOHNSTON. We object.

COURT. Objection overruled.

Q. Did you have any conversation with the darkies on the day of the 19th about McCann's departure?

A. No, I did not.

Q. No conversation with them at all?

A. No, not on the 19th.

Q. The first conversation you had with the darkies about the matter was when?

A. Was when Mr. Barrington was released from Chief Desmond's office and sent back to the house.

Q. That was the first time you talked about his disappearance?

A. I did; but not on the morning of the 19th.

Q. Did you talk on the 19th to the darkies about his disappearance?

A. I did not on the 19th, because Mr. Barrington had related certain circumstances to me, and he said he didn't want the darkies, because negroes are negroes and they will tell it on the outside, and I said nothing.

Q. Isn't it a fact that Mr. Barrington isn't familiar with negro character, such as the southern people are?

Mr. JOHNSTON. We object to that as immaterial.

Q. Don't you know that Barrington don't know anything about the peculiarities of the negro?

A. How should I know what Mr. Barrington's knowledge as to the negro was. I don't know whether he had a great knowledge of the negro or none at all. I didn't consider.

Q. So you didn't talk to them on the 19th. When was the
1405 first time you did talk to the darkies about it?

A. On Sunday afternoon was the first I really had a conversation with them in regard to the matter.

Q. They didn't tell you anything about what Barrington had told them up to that time, Sunday?

A. No.

Q. On the Sunday afternoon when you and Mr. Barrington and the two darkies were engaged in this conversation that you testified about a while ago, did Mr. Barrington, referring to himself and you, to the darkies say if Jim McCann comes back we are not going to let him in?

A. He never made such a statement—that is, to the best of my opinion. If he made any such statement I wasn't aware of it. I will tell you the statement that he did make. I was walking up and down the floor and crying, as any other woman would under the circumstances—if he made that statement I did not hear him. He may have made it, but if he did I didn't hear him.

Q. You never talked with the attorneys about that statement?

A. No; I never heard of that statement before.

Q. You gave your testimony here this morning?

A. Yes, sir.

Q. Isn't it a fact that parts of it were given in subjects and sections and that you had stated the story before that you were going to give?

A. I didn't have to state it before; I am giving facts.

Q. You knew that you were going to testify here, and you have prepared yourself?

A. I never made any preparations.

Q. You haven't taken into consideration what your testimony would be by subject?

A. I haven't.

Q. The message you got; you never talked about that before you came out here?

A. It was not necessary. I knew it by heart. I know what I know. I didn't have to think about it.

Q. Now, you said that was the cane of Jim McCann over there?

A. I do say it was his cane.

1406 Q. Now, do you remember Derby day on June 13th last when you were out at the race track and that Jim McCann had that cane and it was at a time when Captain Phillips was up there on that day and that Jim McCann had gone away from where you were sitting and that the cane was found there in a seat and that you picked it up and claimed it to be Jim McCann's or yours and a woman took

it from you and said it was her husband's cane and you weren't satisfied about it until Jim McCann came back with a cane in his hand?

A. No, sir. I remember I went to the Derby and when McCann wasn't present I noticed a cane that looked similar to his and I started to pick it up and a woman said, "That is my husband's," and I said, "I beg your pardon, I thought it was my husband's, but I see it isn't his." As far as Mr. McCann was concerned I don't suppose he ever knew such a circumstance ever happened, and as far as Captain Phillips is concerned I don't know him. I don't know him, at least by name. I may know his face, but I don't think I ever met him.

Q. Hadn't the first month of your rent expired at the Leland Hotel before Jim McCann disappeared?

A. The first month of our rent was paid in advance.

Q. Hadn't the first month expired?

A. I can't state that. Mr. McCann paid one month's rent in advance. And I know there never was any bill left but what it was paid when presented. He had money enough to pay his bills and he always paid them. He paid the rent of the house.

Q. Isn't it a fact that Mr. Barrington paid some rent at that place?

A. If he had any money in my house I never knew it. I know he came to our house and said his trunk was going to be brought out and——

Q. Repeat that.

A. When Mr. Barrington came to our house he had no money, but that very day Mr. McCann loaned him $50.00.

Q. Did you see him loan him the $50.00?

A. I did. He said he was broke or was going to be put out
1407 of his boarding house and would like to come and stay at our house and do anything he could, and Mr. McCann took to him and was in sympathy with him, and after this statement was made I went back to the back room and Mr. McCann came back and he says "Jessie——"

Q. (Mr. JOHNSTON.) Never mind that. Was that the first $50.00 McCann gave him?

A. I understood he gave him $50.00 previous to that, and Mr. Barrington said in my presence he did give it to him, right when he gave him this $50.00—that he gave him $50.00 in that saloon on the corner of Broadway and Chestnut, run by Gillespie.

Q. Then he had *gov*en him $100.00?

A. Yes, sir.

Q. How long was Barrington and McCann's acquaintance together?

A. I couldn't state that; when Mr. McCann met Mr. Barrington first was when he gave him $50.00—it was only a short time before—only about six weeks at that time. I didn't consider Mr. Barrington—I only knowed Mr. McCann told me he gave him $50.00; I only know that he loaned $50.00—that he gave, and I know why he asked for the loan.

Q. The fact is that Mr. McCann was very liberal with Barrington?
A. He was to that extent. I don't know how much further.
Q. The fact is they went out considerable together, and he paid the bills?
A. Not to my knowledge; I couldn't state. I went to my place of business in the morning and came home for lunch, and went back after lunch and came home in the evening; as to what Barrington and McCann done in the meantime I couldn't state.
Q. You don't know that they went around together all the time?
A. I have no such knowledge.
Q. That might be the case?
A. I can't state. What I know I can state.
Q. Did Mr. McCann ever have or own a pistol?
A. He never did—that is, in his possession he never did.
1408 Q. Now, when you went down to the Four Courts that night, did you see the watch?
A. I did.
Q. It was shown to you that night?
A. It was shown to me that night.
Q. And when you bought that watch, or when McCann bought that watch, you were with him?
A. I bought that watch myself.
Q. You bought it yourself?
A. I did.
Q. Did you pay for it?
A. I paid for it.
Q. Did you pay the money yourself?
A. I gave a check for it.
Q. To whom?
A. To Mr. Ruby; the man whom I purchased the watch of.
Q. And where was that?
A. That is on Sixth street, I think, between Washington and Lucas. I couldn't give you the number, but I think that is the location of the place.
Q. And you and McCann were together when the watch was bought?
A. We were.
Q. And you assisted in picking it out?
A. I did all of the picking. I made the selection myself.
Q. How about the ring?
A. He made the selection of the ring, but I paid for the ring, too
Q. You were with him when he bought the ring?
A. I was.
1409 Q. But the ring that you bought was black enamel, wasn't it?
A. As well as I remember. I wouldn't be positive, but to my recollection it was.
Q. This ring that you looked at to-day is not black enamel?
A. Well, that is the ring. I was mistaken about the enamel. That is the ring.

Q. First answer this question, Is there any black enamel on this ring that is shown you this morning?

A. I am not positive whether there is or not. I think there is a slight—at least I think there should be. That is my impression when I bought the ring, that it had a little black enamel. I never noticed the ring after that. It was only a short time before Mr. McCann's death that I bought it; but that was the style of ring I bought.

Q. Do you know how many diamonds were in it?

A. I never did count the diamonds.

Q. Do you know now?

A. No, sir; I don't know yet.

Q. This button that has got McC. on it—you say that was the back collar button?

A. Yes, sir.

Q. He wore it back behind?

A. Yes, sir.

Q. He had a button in front?

A. Yes, sir.

Q. Did you recognize that?

A. That button that you showed me was a button like he wore, but I wouldn't say positively that it was the button he wore; but the button with the McC. he usually wore in the back. He had several buttons and wore them as he choose.

Q. You recognize the stud button?

A. There may be many buttons like that button. There is nothing to show that it is his button, but that is like the button he had.

Q. There are three buttons you recognize in this case as being all buttons of James P. McCann?

A. Yes, sir. There may be many buttons like that button, but that is like the button he had, and I would say it is his button.

1410 Q. Please take this button and tell me if there is any spring on it.

A. You take it and press it to the shirt and press the spring. I should say that is his button; it is like it.

Q. What other buttons did he wear when he went away?

A. He wore cuff buttons.

Q. What kind of cuff buttons were they?

A. His cuff buttons were similar to the large plain button.

Q. Similar to the one that got the McC. on it?

A. Only they were larger. This portion was larger and more rounded. He wore these to link his cuff to his cuff and then he wore gold cuff buttons—link, with amethyst sets.

Q. Do you recognize that cuff that was shown there?

A. I do.

Q. You never saw any button come out of that cuff, did you?

A. I don't think I did. It seems to me—I wouldn't be positive—I saw one of the cuff buttons come out of it—no; I don't think I did. These buttons don't belong in that cuff, consequently they couldn't have come out of it.

Q. You say these buttons don't belong in that cuff?

A. No.

Q. Did he have any buttons in his shirt?

A. He did. That is the button I described as being similar to that McC. button, and the button with the amethyst sets was in the cuff.

Q. None of those buttons have been found?

A. Some one stated to me one was, but I haven't seen it. I suppose it was a mistake.

Q. You are ready to state now that all these things are the property of Jim McCann?

A. All that has been shown me is.

Q. Do you know how long Tom Leonard and Mr. McCann were out in front of the house on the evening of the 18th?

A. No; I can't tell you; only from supper time until I went out. They may have been there together and may not. As to who was there and who wasn't I can't say. After I finished my supper I went to my dressing room and dressed myself to go out in the country with Mr. Barrington and Mr. McCann. When I went out
1411 Mr. McCann and Tom Leonard were there; but as to how long they were there I couldn't say. They may have been there since we finished supper.

Q. You were taken to the Four Courts on the night of Barrington's arrest by what officer?

A. I have been told since his name is Greeley, but I wouldn't know the man if I seen him.

Q. You were under arrest?

A. If I was I didn't know it.

Q. What time did you see Tom Leonard on the 19th?

A. Well, after I came home from my office—I couldn't state the time, I can't give you the time exactly, but I got home some time between 11 and 12 o'clock. I saw him shortly after I talked to Mr. Barrington. I saw Tom Leonard shortly afterwards.

Q. When Mr. McCann went away you gave him a $5 gold piece?

A. I did.

Q. Mr. McCann was very friendly and very kind to the defendant, wasn't he?

A. He was. He was very nice to him.

Q. The defendant always treated McCann well correspondingly?

A. As far as I know he did.

Q. Now, after McCann had been missing for a day or so you went down to the Laclede National Bank, didn't you?

A. I went on the 19th to the Laclede National Bank and also to the Lincoln Trust Company.

Q. What was your object in going down there?

A. I went to the Lincoln in the first place after he told me what had happened—I wanted to see if Mr. McCann had really—had drawn any money and by knowing whether he had drawn any money I could locate him, as Mr. Barrington told me didn't know where he was.

Q. What time was it you went to the Laclede?

A. Some time during the afternoon, shortly after Tom Leonard left the house, I went to the Lincoln Trust and to the Laclede. I went to see if any money had been drawn and to locate Mr. McCann. Barrington told me he didn't know where Mr. McCann was, he
1412 left with these parties. I thought by going to the bank if Mr. McCann needed any money I could locate him through the banks, and I asked them to let me know so I could locate him. And I went around to the Laclede National Bank and I seen Mr. Lee there and asked him if Mr. McCann had drawn any money there, and he said he had not, and I said: "Mr. McCann went away last night and has not returned and I want to locate him. If he draws any money you will know where he is." He said, "Mrs. McCann, I promise you if he turns in any check for any money before I honor it I will let you know where it is and I will watch and see any checks turned in," and I says, "Please let me know and simply let me know," but he never let me know.

Q. Did you see Mr. Phillips at the Laclede National Bank?

A. I don't know Mr. Phillips.

Q. Did you see and talk with anybody at the bank besides Mr. Lee?

A. I did not.

Q. What position has Mr. Lee in the bank?

A. I don't know. Mr. McCann introduced him to me.

Q. When you went to the bank—had you ever gone before?

A. Several times with Mr. McCann, and the first time I went was when I was introduced to Mr. Lee.

Q. When you went there to the bank there were five certificates of deposit of a thousand dollars each of the Lincoln Trust Company that were there in the Laclede Bank, weren't there?

A. No, sir.

Q. What was in the Laclede Bank?

A. One certificate of deposit, just exactly the amount I couldn't state, but I think it was four thousand, but it had nothing to do with the Lincoln Trust. When he got the certificate of deposit, he took it down and rented a deposit vault in the Lincoln Trust and placed it in it, and later on he had need of some money and borrowed
1413 $500.00 on it, and he had to place it in the Laclede Bank, and if I had known it I never would have gone to the Lincoln Trust. It was explained to me afterwards at the Laclede. They explained to me why it was there.

Q. Did you ask them to give you that certificate of deposit?

A. I did not. I merely wanted to see if Mr. McCann had used any money and would locate Mr. McCann.

Q. You didn't try to get this certificate of deposit?

A. No, sir; I never did.

Q. You didn't request anybody at the bank for it?

A. I never did. I was looking for Mr. McCann, not for money.

Q. Don't you know that there was one certificate of deposit for a thousand dollars that was gone?

A. I do not.

Q. How much was there in there besides the four thousand dollars?

A. I think when the money was first placed there there was more than four thousand dollars. I would not state positively whether more or less.

Q. But there was only the one certificate?

A. To my knowledge.

Q. When you went there at that bank that morning did you try to get anything at all out of the bank?

A. No, sir; it wasn't necessary. I had money of my own. I didn't try to get anything out of the bank.

Q. Mr. McCann was a peaceable, quiet man, not very wild, was he?

A. He was the best man that ever existed to my knowledge.

Q. Was he wild?

A. He was not wild, no.

Q. Did he drink very much?

A. Not very much, no.

Q. Did he lose a great deal of money?

A. He has at times lost money, quite a good deal, and other times he won.

Q. During your acquaintance with him he was robbed several times, wasn't he?

Mr. JOHNSTON. We object.

Q. He was in the habit of showing around large sums of money, and has been robbed several times on that account?

1414 COURT. She may state whether or not he was accustomed to carry large sums of money on his person.

Q. Wasn't he robbed several times?

A. He was never robbed to my knowledge. He was the night he was murdered; not previous to that.

Q. Do you remember when you lived down on Bell avenue?

A. I do.

Q. Isn't it a fact he came home there on Bell avenue and he had been relieved of a considerable sum of money by somebody and he was pretty drunk, too, and he talked very loudly and raised a regular howl about it, on account of his having been robbed and everybody in the neighborhood heard him?

Mr. JOHNSTON. We object to that as incompetent, irrelevant, and immaterial.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Mr. GROVER. I offer to show a series of facts, and this is one of them, that Mr. McCann was a man who invited dangers by his conduct—dangers from thieves and robbers, and I offer to show that he was robbed on several occasions shortly before his disappearance.

COURT. Motion overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Don't you know that he was robbed a number of times immediately prior to his disappearance?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

1415 (To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. The coat that Barrington wore away on that night of the 18th, was that a Prince Albert or a cut-a-way?

A. A cut-a-way.

Q. Did you ever see that coat afterwards?

A. One time.

Q. Where?

A. In out stable in the back yard.

Q. Well, now, what became of it from that stable?

A. Well, it was taken, I suppose, as has been stated to me—I didn't see—taken from there down to Chief Desmond's office.

Q. Would you recognize that coat?

A. I wouldn't say positively that I could.

Q. How many coats did Barrington have there at your house?

A. I couldn't tell you that. I never considered his apparel as to how many coats he had. I know he wore a Prince Albert several times.

Q. That this coat that he wore away that night was a cut-a-way, how did you come to remember that?

A. When they left the house and started up the street I noticed particularly Mr. McCann and Mr. Barrington at that time and I says to Mr. Leonard, "Isn't Mr. McCann the handsomest man you ever saw?" and he sayd, "Jim is good looking," and I remarked as to how he dressed. He wore a cut-a-way coat, fedora hat—the brim of the hat kind of laid down on his shoulders, and I remarked he looked a picture in it, and Mr. Leonard both remarked as to how becoming a straw hat was to Mr. McCann.

Q. They had started west from your house?

A. Yes; I believe that is west from 2901 to 3200 Franklin—Compton avenue.

Q. They were going from the river on Franklin avenue?

A. Yes, sir; away from the river.

Q. Now, how far had they proceeded when you noticed the way they were dressed?

1416 A. Oh, I guess about twenty or thirty steps—just a short distance.

Q. About 90 feet?

A. Yes; just a short distance.

Q. Now, at the time Barrington was arrested, what kind of a coat did he have on, the same coat?

A. I am not positive. I guess the coat at that time had been stored away; he couldn't have on the same coat, but I don't know what style he had on.

Q. Did he have on a Prince Albert then?

A. I don't know—no, no—what he had on when arrested. When I came back and Barrington was arrested, I walked into my parlor room and I didn't look what he had on, but I know he couldn't have on the coat he had on when he left the night before; I knew he couldn't have it on, the condition it was in.

Q. Now, when you were out at Bonfils and the body was being examined, were any bullets found while you were out there?

A. I believe there was. I didn't see the bullets that were found or when they were found.

Q. You didn't see them?

A. No; I didn't look for them.

Q. Isn't it a fact the body was greatly swollen and distorted?

A. To some extent.

Q. Isn't it a fact the face was—did you recognize him by the face?

A. I recognized him, his face, head, teeth, shoulders.

Q. When they started away the night of the 18th and went away and he never came back any more, what time was that?

A. Between 7.30 and 8.00 o'clock. Sometime about that time. I couldn't state the exact time.

Q. Now, isn't it a fact that the Bell Advertising Agency in Chicago or this matrimonial bureau, isn't it a fact that that was raided by the officers of the city of Chicago and all the literature seized and carried away and that your business broke up, and seizure was made on account of a search warrant and on account of fraudulent business?

Mr. JOHNSTON. We object to that on the same ground as has been stated. It has nothing at all to do with the res gestæ.

1417 COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Isn't it a fact that your business, conducted in the name of the Bell Advertising Agency, was raided by police in the city of Chicago and all of the literature seized and the business broken up, and that you went out of the business after this raid took place, because the business had been a fraudulent business?

Mr. JOHNSTON. The same objection.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. How many different names did you conduct your business under in the city of Chicago?

Mr. JOHNSTON. Same objection. Irrelevant and immaterial.

COURT. Objection overruled.

A. Only one.

Q. What name was that?

A. Miss Main.

Q. And the Bell Advertising Agency?

A. That was the name of the business, but my name was but one.

Q. Didn't you advertise your business under a great many different names?

A. I did not.

Q. In the conduct of your business there didn't you employ Louise Williams, Annie Frank, Bedelia Tucker?

A. I don't know any persons by those names.

Q. You had no stock pictures there you say?

A. I did not.

Q. You never used a stock picture in your matrimonial bureau?

A. I did not. I used pictures according to the requests of my clients, but not any further than they requested it.

1418 Q. Do you know anything about the Pacific Publishing Company?

A. I have heard of it, but I know nothing of it.

Q. Were you connected with it in any way?

A. I had nothing to do with it.

Q. How many different suits of clothes did you ever see Barrington wear?

A. I saw Mr. Barrington wear a Prince Albert suit and a cutaway suit, and as to whether he ever wore any other suit I don't know.

Q. You never saw him wear any other?

A. If I did I didn't observe it, because I didn't consider it. It didn't make any difference to me what he wore.

Q. You couldn't identify even the kind of clothes he wore——

But as to the quality—cheviot, broadcloth, or serge—I couldn't tell. I knew he wore a cutaway the night he went away.

Q. Did you ever see him wear this coat before?

A. Come around and let me look at it. I saw him wear the same kind of coat, and if he went away after his arrest with a Prince Albert suit, I don't know. I know he wore one.

Q. He never got the cutaway back?

A. Not to my knowledge; I think not.

Q. Mrs. McCann, how many pairs of shoes did Mr. McCann have at the time of his departure?

A. He had one pair, the pair he had on, and a pair of bedroom slippers.

Q. Did you know of his giving away any shoes about that time?

A. I know he gave away a pair that day. I waited in the carriage while he bought his others.

Q. The day that McCann disappeared he bought a pair of shoes and gave them away?

A. No, sir.

Q. That is the way I understood it?

A. You didn't understand it right.

Q. Speak a little more slowly and we will all understand. Now, when did he give away this pair of shoes you are talking about?

A. On the day he bought the shoes—the night. He gave
1419 away a pair of shoes on the day of the dedication of the World's Fair. I think that was May 30th—that was the day. I went with him went he bought the shoes. I think that was the day. I waited in the carriage outside while he went in to buy the shoes for himself. He went in to buy a pair of shoes for a man who had a saloon near the Planters, near the corner of Broadway—between that and the Planters Hotel. He bought a pair of shoes for that man and also a pair for himself. When he came out he had a pair for himself, and I said I was glad he bought them.

Q. That was dedication day?

A. I wouldn't be sure, but it was around that time.

Q. That was when he bought the shoes that have been found and exhibited to you here as McCann's shoes?

A. Yes, sir; and we drove around in front of the place and gave the pair he bought to the other party.

Q. Those were for Mr. Robinson?

A. I wouldn't say whether Mr. Robinson or the owner of the saloon.

Q. He used to be at the Green Front?

A. I don't know anything about the Green Front. I waited till he came and he told Jim, "Why don't you give me a pair, that needs them, he doesn't need them," and the next day he went and gave him another pair.

Q. Do you know that?

A. I know where he got the shoes, and I know I was with him.

Q. Who was the other party?

A. It was either Jack Robinson or Jim Hawes—he bought one pair for one and the other for the other.

Q. He gave away two pairs?

A. Yes, sir. He won on the races that day nearly $800.00, and they said, "You make us a present."

Q. Do you know of his giving away any other shoes?

A. No, sir.

Q. Those he gave away were new?

1420 A. They were and he paid $6 a pair for every shoe he wore.

Q. He wore good shoes?

A. He wouldn't give anything but good shoes away.

Q. They wore well?

A. I don't know how long they would wear, they were good shoes, but as to how long they would wear without knowing who wore the shoes I don't know.

Q. He didn't give away any old shoes?

A. I don't think he would condescend. I don't think he would give anybody a present like that, to my knowledge. Somebody might pick them up.

Q. When he bought those shoes that you have identified as the ones he wore away, did he have any other shoes in the house?

A. He naturally had shoes on when be bought those, and they were sent to the house afterwards and he didn't wear them any more.

Q. Did he wear his slippers very much?

A. As a general thing when he came in the house; especially after supper, if he didn't intend to go out he put on his bedroom slippers.

Q. The fact is, he used to wear his slippers as much as possible?

A. That was owing to the condition of his feet. If his feet were tired he put on a pair of slippers. Sometimes he wore his slippers and sometimes he would not.

Q. Did he always wear low-quarter shoes?

A. In the summer time he generally did; in the winter he did not.

Q. You don't know of his buying any other pair of shoes than those you have mentioned?

A. I have known him to buy others, but not since.

Q. Not here in St. Louis?

A. I can't state as to that. He bought shoes, I am positive of that, in St. Louis, but as to where I don't know; but since he bought them he hasn't purchased a pair.

Q. Sometimes he would go down town with his slippers on?

A. I know of his having done so on one occasion; that was an engagement and he rushed on his slippers rather than to fail
1421 to fill an engagement.

Q. He spent a good deal of time at home?

A. If I was at home; he didn't spend his time at home when I was down town. He was usually down town, but if I was at home Mr. McCann was usually at home, unless he went across the street or out on some errand or business matter; otherwise he was always at home.

Q. Now, Mr. McCann traveled around a good deal. He was a pretty heavy man, and he generally rode on the street cars as much as possible?

A. Well, now, that was owing to the occasion as to whether it was necessary. When he choose he walked, and he took the street car when he choose, or when he choose he rode in a carriage.

Q. He didn't do a great deal of walking?

A. Sometimes he did and sometimes he didn't; when I was with him, as a general thing, he rode; but I don't know what he did do when I wasn't with him. People usually walk or ride.

Q. Mr. McCann's feet were subject to swelling a good deal—sometimes they were swollen and he would have trouble with them, and sometimes they would be all right?

A. Not decidedly so. In the summer time, as any other large man, if he walked, the warm weather would somewhat irritate his feet. He wore shoes to give him comfort. After he came home he wanted a low pair to put on, and if he went out and wanted a high pair he wore them.

Q. Along about the time of his disappearance, what condition were his feet in then?

A. I couldn't state as to the condition of his feet.

Q. Were they swollen?

A. They were not swollen, particularly.

Q. Along about dedication day, were they swollen very much then?

A. His feet was somewhat sore, and he bought his shoes a little larger than usual then. He got them a size larger than he was in the habit of wearing.

1422 Q. What did he usually wear?

A. Eights. I think he got 8½ that time; I wouldn't be positive; I don't know which.

Q. Isn't it a fact, on account of the condition of his feet—being subject to swelling and so on—that he generally had several pairs of shoes about the house?

A. I have told you he never kept shoes about the house. He got things as he needed them; and I don't think he had a pair about the house—a pair of shoes except those he wore, besides a pair of bedroom slippers.

Q. Besides a pair of bedroom slippers?

A. A pair of bedroom slippers; yes, sir.

Q. Now, all the time that you have been running this Leland Directory matrimonial business did Jim McCann ever go about there?

A. He sometimes came.

Q. He sometimes came?

A. Yes, sir; that is, a short while before his death, but I suppose for a month or six weeks before that he didn't come.

Q. Before he died for a few months he drank pretty heavily, didn't he?

A. He did not.

Q. Did he ever get drunk in the last sixty or ninety days?

A. I never saw him drunk.

Q. Never saw him drunk in your life?

A. I have seen him when he was drinking, but not drunk.

Q. You never saw him in a state of intoxication?

A. No, sir; that is, according to my judgment of drink. I should think a drunken man is a man who is staggering or in a state of insensibility.

Q. You wouldn't regard him as drunk unless he was staggering or in a state of insensibility?

A. I would judge him drunk according to his conversation.

Q. Isn't it a fact he came into the Leland Directory and came in drunk several times and got money from you at the time?

1423 Mr. JOHNSTON. We object to that as incompetent, irrelevant, and immaterial.

COURT. She may answer the question.

A. He never came in my office at any time so intoxicated that I would term him drunk; as I have stated before, I have seen Mr. McCann when he was drunk, but never drunk according to what I would term a drunken man.

Q. Did you ever see him come in there and talk roughly, and curse and swear, and demand money?

Mr. JOHNSTON. We object to that as irrelevant.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Mr. GROVER. I offer this for the purpose of showing that he was a man that drank excessively and constantly, and this is a circumstance in the case, and I except to the ruling of the court.

Q. You never had any trouble with him down at that matrimonial agency of yours?

A. No; I did not.

Q. When you saw the teeth out there on the body at Bonfils quarry did you see the gold crown?

A. I didn't look to see whether the gold crown was there or not. I saw his teeth, but I wouldn't say that I saw the gold crown in them. I knew his teeth and recognized him by the shape of his head and teeth and form in general, and I said positively it was my husband, Mr. McCann.

Q. Were there two teeth in front?

A. There were.

Q. Side by side?

A. I saw them that way; yes.

Q. Don't you know that Dr. Randal on that day tried to fit other teeth into the cavities where the front teeth were gone?

A. I do not know anything of the kind.

1424 Q. Now, you testified, didn't you, before the coroner as follows, in reference to the shoes: "Q. Would you recognize his shoes if you saw them?—A. Yes, sir. Q. Are those the shoes?—A. Those are the shoes. Q. How long has he had them?—A. He got them sometime before the World's Fair dedication. I could not tell the date, but I went with him when he got them." Did you testify to that?

A. I think I said near about that time, and I was with him. As I stated before, I don't know that it was on that day or before, but sometime about that time. I waited in the carriage. I went with him to the store. He went in and bought the shoes and came out and drove away with me. That is what I term with him.

Q. How long have you known Oney Morrison?

A. Since the day we employed her at the house.

Q. Did she remain in your employ after the disappearance of Jim McCann?

A. She did.

Q. How long?

A. Until shortly before I broke up housekeeping, which was sometime in the latter part of November; then she got a position somewhere else, and her husband took her place.

Q. When she was there her husband was there all the time?

A. Yes, sir; I had both of them employed in the first place, and Charley. Before I broke up house I told her if she could get another place to get it and I would employ her husband. He did the cooking and her housework, and they stayed at my house at night until I quit keeping house.

Q. Did you say anything about like this on the Sunday that you and Barrington and the two darkies were upstairs at the Leland and had the conversation that you speak about, "That you would give all of the diamonds and jewelry that you had to know that Jim McCann was alive?"

A. I said this: I said "If Mr. McCann is in the trouble that you say he is I will spend every cent of money I have and will give up my diamonds to know that he exists. If he is with any woman I
1425 will sacrifice him to any woman to know that he exists."

Q. Did Mr. McCann have a great quantity of jewelry—a number of rings, diamonds, and jewelry in general?

A. No, sir; not since I have been married to him he didn't have any quantity.

Q. You didn't try to get any money or any property of Jim McCann's down at the Laclede National Bank the next day after he disappeared?

A. I did not.

Q. You never compared this paper that you had here with the letter that they showed you—that the prosecution showed you and asked if that wasn't a copy of the letter that you had received there at the house—or that Barrington received there—the one that you grapp'ed for and grabbed for—you never compared that?

A. I don't understand.

Q. Did you ever compare that letter with that paper that you were shown awhile ago, and see if it contained the contents of this letter?

A. Certainly, I did.

Q. You never saw that before to-day?

A. Not before this morning.

Q. Who took the letter to Chief Desmond's office?

A. I did.

Q. Now, McCann got threatening letters from people that were his enemies, didn't he?

A. He did not.

Q. He did not?

A. No.

Q. Now, when did you first tell Barrington that you thought McCann was dead?

A. I never told him that I thought he was dead. I told him that I feared for his safety, and that I was afraid of his death, and he would say every time, "Mrs. McCann, he is just as much alive as you and I are."

Q. Did you ever tell him that if he was an innocent man he was all right, and if he wasn't he would be held responsible for it?

A. I did tell him that.

Q. When?

A. Sometime during the week in our conversation; I
1426 couldn't tell just the hour or day, but I told him not only one time, but several times. I told him on Wednesday next, before he was arrested on Thursday, and on Sunday I said to him—that is, when he would say, "Mrs. McCann, I fear you think I don't tell the truth and that I am responsible," and I said, "If you are an innocent man it is all right, but if not, you will be held responsible," but that was after Oney told him that.

Q. Did she tell you anything about that?

A. No; she told him; she didn't tell me.

Q. You were present?

A. I was present; yes.

Q. And did she tell you anything about it before that?

A. She did not.

Q. When did you first suspect that McCann might have met with foul play?

A. I first suspected it on that Sunday afternoon, but when I first suspected it I didn't suspect Mr. Barrington at the time. He told me the people they had the fight with got him in such condition and I feared that these men,, if they had him in such condition, had probably dealt foully with him afterwards.

Q. When did you first suspect that Barrington may have been guilty of foul play?

A. About Tuesday, and on Wednesday I felt it more, and on Wednesday I was pretty nearly satisfied—I am not satisfied yet, but I believed so, and went down and told Mr. Davis, my attorney.

Q. Why did you suspect Barrington?

A. Because he told me that Mr. McCann would telephone me. He told me he got a message on Wednesday morning to send money to Centralia, Illinois, and I got this letter at the house and the telephone message, and none of them seemed to be direct from Mr. McCann. I never got anything directly from him, and I began to think there was something peculiar about it in some way.

Q. And you thought Barrington was guilty?

A. I believed that probably he was, and if he was, I wanted to know it. I wanted to know who was guilty.

1427 Q. Are you satisfied yet?

Mr. JOHNSTON. One moment. Well, I will withdraw my objection.

A. I believe he is, and I will say again what I said to him before, "If he is innocent and proves himself innocent, I wouldn't do him any harm on earth."

Q. You think he ought to prove himself innocent?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Do you know of any special occasions when McCann got into fights and trouble on account of women?

Mr. JOHNSTON. We object to that as irrelevant and immaterial.

COURT. I will sustain the objection.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

A. No; ntohing serious. A few little spats, as all married people will.

Q. Never had any fights?

A. The only real trouble I had was over Mr. Barrington. I didn't want him there and Mr. McCann did.

Q. You had an aversion to Barrington?

A. He pried into our business matters, and I didn't like it. Wanted to know how much money I had.

Q. I didn't ask you for that. You never were intimate?

A. I was friendly with him as I would with any other man brought there under the same circumstances. I treated him kindly, but I had no particular feeling for him.

Q. Isn't it a fact that when you were so grief stricken as
1428 you say you were, Barrington says, "I am going down to Chief Desmond and explain this whole business and have him examine into the matter?"

A. Not in that way; but he told me if I didn't quit crying he would go down and report it. He did it to intimidate me—threatening me if he told it would bring Mr. McCann and I into trouble. He did it to intimidate me at the time.

Q. You say that he was trying to intimidate you?

A. I believe now he was; but then I didn't know he was. I believed that he was going to go down. He told me if I wouldn't quit crying that he would go and tell Chief Desmond what Mr. McCann had done. He thought naturally that I didn't want Chief Desmond to know what he said Mr. McCann had done.

Q. Didn't Mr. Barrington want you to go down and tell Chief Desmond about this and the public authorities, and didn't you say to him you'd get a private detective to attend to the matter instead of the public authorities? Didn't you say so?

A. I did not.

Q. When you went to the station that day, the time of Barrington's second arrest, who all were in the party going to the station?

A. Mr. Leonard and two of Chief Desmond's men, but I don't know the names. I think one was Schmidt, and the other I didn't know, but I would know the two men were I to see them.

Q. Were the darkies left in charge of the house?

A. The darkies and my sister were left in the house.

Q. And your sister didn't go down to the Four Courts with you?

A. She went down that Saturday night after the arrest.

Q. After the arrest of Barrington?

A. Yes; after the arrest of Barrington.

Q. Didn't she go with you?

A. You asked me who I left in the house when I went to Bonfils?

1429 Q. No; to the Four Courts?

A. I didn't understand the question, then.

Q. When you went down to the Four Courts—Chief Desmond's office?

A. My sister, one of Chief Desmond's men, and myself.

Q. And Tom Leonard?

A. He went down, but he didn't go with me.

Q. Were the darkies left in charge of the house?

A. Oney Morrison, the colored woman, and Charley and Tom Leonard went down to the Four Courts. I didn't see the Morrisons there, but I heard they were there.

Q. This was Saturday night, the night of the second arrest?

A. Saturday night; yes.

Q. You said it was at your request that Chief Desmond sent after the picture?

A. It was.

Q. That was back at the house?

A. It was at my request.

Q. Where was the request made?

A. At Chief Desmond's office.

Q. Where was the picture?

A. Behind the cabinet mirror on the mantel in the parlor.

Q. Who were the officers that took you to the Four Courts—Schmidt and——

A. I didn't say so.

Q. Who were the officers?

A. The one that went to the Four Courts—I believe his name was Greeley—another one went with me to Bonfils I don't know personally. I could recognize them.

Q. Do you know Mr. Finan?

A. I don't know his name.

Q. Don't you know you never said anything about the picture at all and that the officers went back and got the picture on their own account?

A. I do not.

Q. The only way you identify those clothes is on account of the character of the goods?

1430 A. I identified those clothes because I know they are his clothes. I selected the goods, saw them fitted on him, and know they are his clothes. I know that pair of pants. I had in my house and was sent here by me. I know they are his.

Q. You bought this shirt for Mr. McCann; you say you got a half a dozen at the time?

A. I did.

Q. Were they all alike?

A. No, sir.

Q. How many different kinds were there?

A. There were four of them black and white and one a little red and white.

Q. No two alike?

A. No two alike.

Q. And you think you could recognize the other five if shown to you?

A. Just as quickly as this and just as easily.

Q. Can you describe them?

A. Well, yes.

Q. Could you describe that?

A. Not decidedly, but I could recognize them if I were to see them.

Q. By the general appearance?

A. No; by what they are and how I saw them when I bought them.

Q. By what special means do you identify this sock that was found here?

A. Because I purchased that sock and looked at it closely when I bought it, and bought it because I admired it.

Q. Could you identify any sock you bought for Jim McCann lately?

A. I bought that, but that isn't lately. I can describe any hose I ever bought for him in my life. I didn't purchase them until I looked over them and knew what they were.

Q. You don't remember any special thing that called your attention to these clothes at this date?

A. Certainly I do.

Q. Could you tell the shirt that he had on out of the six shirts?

A. Yes, sir.

Q. What is it called your attention to it specially that evening?

A. He asked me that morning to put buttons in his shirt,
1431 which I did, and he didn't change it during the day, and when I was dressing he came in and said if he should change his shirt, and I said it was clean enough, and he asked me to put the diamond stud in, which I did, and I brushed his hair and fixed it as it should be, and the pants—the light pants compared with the vest and compared with the coat; he had a grease spot on the back of the coat or a kind of soiled place, and he asked me to rub it off, and I took a towel and hot water and soap and erased it before he left the room.

Q. You never all of this shirt that was found?

A. I saw all there was of it.

Q. You saw this cuff and a little bit of rag that was left?

A. I saw more than that, I think.

Q. What had become of that shirt? Did you see considerable of that shirt when you were here before the grand jury?

A. I saw a portion of the shirt.

Q. How much of the shirt did you see?

A. I couldn't tell you just exactly how much of the shirt I saw, because at the time I was much overcome and everything; but I saw enough of the shirt to know it was Mr. McCann's.

Q. Could you give us an idea of how big a piece you saw?

Mr. JOHNSTON. We object to the proceedings before the grand jury. The oath taken there precludes the witness from divulging anything that passed there.

Q. (COURT.) Was that the only time that you ever saw any other portion of the shirt?

A. The first time I ever saw it was at the mounted district station. It was I suppose about half, or a little more or less, but it was very much decayed and I looked to see what it was and saw it was a portion of his shirt, not the amount of it. I noticed the mark and saw it was his. I identified it but not as to quantity, but as to the material and description.

1432 Q. Where is the vest—have you ever seen the vest?

A. The vest that Mr. McCann wore away that evening?

Q. Yes.

A. I haven't.

Q. Have you ever seen the pants?

A. I have not.

Q. You have never seen them?

A. No, sir.

Q. When was the first time you were known as Jessie?

A. That I was named Jessie?

Mr. JOHNSTON. We object to that as immaterial.

Q. When were you named?

A. I couldn't state the hour, the day, or the month.

Q. Was it by yourself or somebody else?

A. I gave myself the name of Jessie.

Q. What time in your life?

A. When I was a very young girl. I couldn't give you the year. I thought nothing particular about it.

Q. Do you know when Jim McCann bought this cane that you identified here?

A. I know only about the time. I could not state the day nor the month.

Q. When did he buy it, about?

A. I couldn't state just exactly; along some time in the spring, or along in April or May. As I said, I can't state the month or day.

Q. April or May of what year?

A. 1903.

Q. You were not with him, were you?

A. I was not.

Q. Did he have a cane before that?

A. Yes; he had several.

Q. Were there several in the house at that time?

A. No; he had given them all away.

Q. It was the only one in the house at that time?

A. The only one in the house at that time to my knowledge.

Q. Prior to this time, when was it that he had any cane in the house, if you can state?

A. I can't state positively he had any in that house 2901; but I can state, Mr. Barclay, his brother-in-law, that was given to him by Mr. McCann prior to that.

1433 Q. Do you know what he did with the cane he had before that?

Mr. JOHNSTON. We object to that as irrelevant.

COURT. You may answer.

A. I can't state positively what became of the cane he bought prior to the last one or to this one. I know he bought several to my knowledge, and that he has given them away and lost them and left them in different places.

Q. Did Barrington ever carry a cane?

A. I have seen him having a cane or stick of some kind in his hand, but never gave it particular attention.

Q. It was no regular carrying of a cane?

A. I didn't watch him so closely as to know whether he was in the habit of carrying a cane or not.

Q. Do you know of his having any particular cane or not?

A. No.

Q. Or the character of any cane?

A. No; but I didn't consider his cane that much; only the cane at the Four Courts that was in the trunk and taken out.

Q. When you started for Bonfils for the purpose of identifying the body, did you have any idea when you started out there as to whether or not that was the body of James McCann?

A. Nothing further than what the officers told me.

Q. Nothing further than what the officers told you?

A. No, sir.

Q. From what the officers told you did you have any idea?

A. I didn't think it was him from what they told me.

Q. You had no suspicion of it, did you?

A. Well, I may have had suspicion, but I believed what they told me. I had no evidence for it otherwise.

Q. How long have you known Mr. George Church?

A. I haven't known Mr. Church any length of time. The first time I ever met him in my life was in the Southern Hotel, in the parlor.

1434 Q. What time?

A. Near the time of the World's Fair dedication. I think it was the first Sunday after the World's Fair dedication. He took dinner with us in the cafe that afternoon the first time I ever saw Mr. Church.

Q. Was there in your house at 2901 Franklin avenue an individual by the name of Jennie Scott?

A. Yes; I have understood she was; I never saw her there.

Q. Did she stay there any length of time?

A. She did not.

Q. Did you ever see a person there that was represented to be Jennie Scott?

A. No; but I know Jennie Scott.

Q. You never?

A. I never saw her there. We had a flat rented of her for a week or so—she and her sister. I can't state the time, but probably two weeks; not as much as a month, though.

Q. When she was there at the Leland who was with her?

A. I can't state that.

Q. You never saw her yourself at the Leland?

A. No, sir; not to my remembrance; I didn't.

Q. You know Alice Findlay?

A. I do not.

Q. Did you ever see her?

A. Not to my knowledge.

Q. Did you ever hear of her?

A. Well, I can't say that I haven't heard of her.

Q. Now, when you returned from Bonfils—you went out there to identify this body that was found, and Mr. Church and Mr. Leonard came back there with you; didn't they?

A. From Bonfils, on the Sunday afternoon?

Q. The time that you looked at the body?

A. Yes; Mr. Church came back on the same car, and Mr. Leonard, my sister, and a number of others.

Q. They had been with you when you went to look at the body?

A. Mr. Church and Mr. Leonard were with me when I went to look at the body.

1435 Q. On the way back on the street car did you and Mr. Church and Mr. Leonard converse with each other and compare your ideas as to the identification of the body that was found out there?

A. We did not.

Q. Now, Mrs. McCann, will you please state the various different times at which you talked with Charley Morrison and his wife concerning this affair after the 18th day of June last?

A. I can't state the day or the time, but on the Sunday that Mr. Barrington, as far as my recollection goes, stated to me that they treated him with disrespect and all this kind of thing and I asked him if he told them what he told me and I told him to call them up. We talked it that Sunday evening.

Q. That is the first time you talked of it?

A. To the best of my recollection it is.

Q. When did you and these darkies talk about it after that?

A. Right at the time when Mr. McCann first disappeared. Naturally we talked it over and we wondered one thing and another and over what Barrington told us and all this kind of thing.

Q. Was that before Sunday?

A. The first time was Sunday afternoon after Barrington had made his statement to them.

Q. How many times after Sunday did you talk about it?

A. I can't tell you that.

Q. Do you remember any particular time or place where the matter was talked over?

A. I do not remember any particular time or place. I know we talked it over afterwards, but as to the time and place I can't state positively.

Q. Did you ever look at the files of the newspapers which Mr. Davis kept which published anything relative to the McCann disappearance and go through all the facts with reference to them?

A. I did not. I never read the newspapers from the time of Mr. McCann's disappearance on. I never read the newspapers.

1436 Q. Did you ever see the file of newspapers which has been compiled of all the various newspapers relating to this case?

A. I have never seen it.

Q. You have never seen it?

A. No, sir; I have never seen it.

Q. You have never examined these newspapers and subjected them to your mental scrutiny as to whether or not they stated what was true and what your testimony would be concerning the subjects mentioned in these newspapers?

A. No, sir; it is not necessary for me to examine anything in order to tell the truth. I merely state what I know.

Q. You have never examined these newspapers at all?

A. I have never.

Q. Now, when you talked with the darkies about this case and heard them talk about it did they ever tell you that Barrington said he would kill McCann?

A. The darkies have never told me so, to my remembrance. I am positive of it.

Q. Now, what kind of a man was Barrington around the Leland Hotel there. Did he ever use profane or vulgar language?

A. He did not, to my knowledge.

Q. You never heard him?

A. I have never heard him.

Q. He always conducted himself as a gentleman in your house?

A. As far as I know, he did.

Q. This Saturday that they started out to Bonfils, or at the time of the disappearance, what time did you have dinner that day?

A. I can't state as to the time, but I suppose at the usual time.

Q. When was that?

A. Some time between 12 and 1.

Q. What time did you have supper?

A. I don't know. I didn't have any. What supper was had at the house I had none at all.

Q. That was the night of the 18th?

A. The night of the 19th.

The 18th day of June?

1437 The 18th of June we had supper. I thought you mentioned Saturday evening.

Q. The evening that Barrington and McCann went out?

A. We had supper sometimes between six and seven. We usually aimed to have it at six, but sometimes it was nearly seven. I misunderstood your question.

Q. Was Leonard there at that time?

A. He was.

Q. These shoes that he wore when he went away were low-quarter shoes?

A. They were.

Q. What did he do with his high-quarter shoes?

A. I have never done anything with them. He didn't have any high-quarter shoes at that time, to my knowledge. If he had, they were shoes that were worn and old and he probably threw them away or gave them to somebody.

Q. I am asking you about the shoes with tops to them.

A. That is what I mean. If he had any, they were worn and old and not left in the house.

Q. How long before his disappearance did you see him with high quarter shoes in the house?

A. He wore them before he bought low shoes at Swope's. At the time he bought the shoes at Swope's that are now here and I have identified as his shoes.

Q. Now, these high-quarter shoes—those shoes with tops to them

A. I know what a high shoe is and a low shoe is.

Q. How long had he worn these shoes before he bought these low quarters at Swope's?

A. He wore them as long as they were good enough to wear.

Q. As long as they were good enough to wear?

A. Yes.

Q. When he bought the low-quarter shoes the high quarters remained in the house?

A. I don't know. I told you I thought he left the high quarters at Swope's shoe store to be sent out. If they were sent out, I don't know.

1438 Q. Did he have any other shoes besides these high quarters

A. I have stated before that he had none in the house to my knowledge of any kind. He had other shoes previous to these. He always had shoes in the house when he needed them.

Q. Weren't all his front teeth filled with gold on the outside

A. No.

Q. On the 18th when he disappeared did you notice his ring particularly?

A. Certainly; I did not particularly. He always wore the same ring after he bought it.

Q. You didn't notice it off?

A. I noticed it on, but not particularly.

Q. You did notice it on the 18th?

A. I did.

Q. You think that you noticed that specially on that evening?

A. I noticed it every day and every evening that he was in my presence.

Q. Did you notice specially that he had on his watch that day?

A. I know that he had.

Q. And did you notice specially that he had any diamond in his bosom that day?

A. He had a diamond stud in his tie that evening. I adjusted the stud in his tie. It is a match to this ring I have here.

Q. He had on that when he left?

A. He had.

Q. You have never seen it since?

A. No; I have not.

Q. Do you know where Mr. McCann bought any pistol?

A. I do not know just where he bought the pistol.

Q. Do you know where he bought any cartridges?

A. I do not.

Q. Did he ever tell you he bought any?

A. He told me he bought a pistol.

Q. Did he tell you on the night of the disappearance about where he had bought the pistol or cartridges?

A. No, sir; he didn't; but he told me on the Tuesday before his disappearance, and Wednesday, and who he bought it from.

1439 Q. Did he tell you where he bought it?

A. I think he said Simmons'; I wouldn't be positive.

Q. At Simmons Hardware Company?

A. I wouldn't say positively; I don't remember.

Q. You did swear once that he bought it at Simmons?

A. If I swore it I thought it that way at the time. I wouldn't be positive, as I say, about where he bought it.

Q. Do you know whether or not Mr. McCann had dissipated two or three fortunes?

Mr. JOHNSTON. We object to that as irrelevant.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. How many times was Mr. McCann married?

A. Twice as far as I know.

Q. Do you know of any threatening letters that McCann ever received from enemies?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Did you and Mr. McCann ever have your pictures taken together?

Mr. JOHNSTON. We object.

COURT. You may answer.

A. Mr. McCann, Mr. Barrington, and I have had our pictures made together.

Q. You three?

A. We three.

Q. That picture has not been exhibited here to you to-day, has it?

1440 A. It has not.

Q. Then, when you stated a while ago that the only picture you have of McCann was taken back several years ago—two pictures taken back several years ago—that was a mistake?

A. No; it was not. I have no picture of Mr. McCann besides one he got 24 years ago. Those pictures that were taken together I haven't got them.

Q. When did they part from your possession?

A. When I sent them by Mr. McCann's request—sent one to his sister near Lexington, Kentucky, and one to my father at Watman Kentucky—the only two I ever had of him.

Q. Have you a photograph album?

A. I have not.

Q. Have you any photographs?

A. I haven't had since I was a little girl.

Q. Haven't you got a lot of pictures at home?

A. No.

Q. You were very fond of Mr. McCann?

A. Certainly I was; more than of any man I ever saw. I have kept pictures of him; that is, that he gave me. When he didn't give them to me I didn't keep them, but I sent them away at his request.

Q. He used to have them taken frequently?

A. No, sir; the only ones he ever had made were those two at the Suburban Garden, to my knowledge.

Q. You say you didn't have any aversion to Barrington at all?

A. No; I did not. No particular diversion.

Q. Didn't you oppose his accompanying you and Mr. McCann around town?

A. I did. Not that I had any aversion towards him, but I did oppose him.

Q. If it wasn't on account of aversion, what was it on account of?

A. On account of his notoriety.

Q. You didn't wish to have publicity and notoriety of that kind?

A. I have never wished for it in my life.

1441 Q. Now, did you ever make this statement against the defendant to a reporter of the Post Dispatch: "If Barrington says that my husband ever assaulted me he lies."

MR. JOHNSTON. We object. State the time and place.

Q. On the 12th of July—that was on Sunday—on the 11th day of July did the reporter of the Post Dispatch have a conversation with you and talk with you about this case and did you state to him that if Barrington says that my husband ever assaulted me he lies?

A. I don't remember of having talked to the reporter of the Post Dispatch on that day. I talked to some reporters, but I could say who they were, but I wouldn't have used that language. I may have said if he stated such a thing he told an untruth, and it is an untruth.

Q. You wouldn't have used that language?

A. I would not. I would say it was an untruth.

Q. Well, did you think that Barrington was a despicable kind of a fellow?

Mr. JOHNSTON. We object.

Q. Did you ever state that he was a despicable creature?

A. No.

Q. You never made a statement of that kind to a reporter of the Post Dispatch?

A. Never did.

Q. Did you state this to a Post Dispatch reporter on the 11th day of July, 1893, at the Four Courts or at your home: "I always did despise the man, and I shall use every effort in my power to put him where he belongs."

A. I never made such a statement as that at either place.

Q. You never made any such statement as that?

A. No, sir; not at either place.

Q. On June 29th, 1903—that was Monday, after this Sunday, when you had this talk with Marrington and the darkies—did you suspect that Barrington had killed your husband?

1442 Mr. JOHNSTON. We object. He is calling now for thoughts of the witness.

COURT. Objection overruled.

Q. I will ask you if, on the 28th of June or the 29th of June, did you suspect that the defendant had murdered your husband

A. I don't know what days those dates were.

Q. You know, Sunday afternoon, when you, Barrington, and the two darkies were up there in the room and had the first conversation you told us about; at that time did you suspect that Barrington had murdered your husband?

A. I did not suspect Barrington at that time.

Q. At that time did you think that Barrington had been connected with any plot to kill your husband?

A. I did not.

Q. I will ask you if, on the 28th of June, you didn't speak to the Post-Dispatch reporter as follows: "I believe that there was a well-defined plot to kill Mr. McCann perpetrated?"

A. I did not.

Q. Didn't you make this statement to him: "From the evidence produced, I am fairly well convinced that Barrington is the slayer?"

A. Not in those words.

Q. I will ask you if the reporter didn't come on the 28th of June, or did you say on the 28th of June to the Post-Dispatch reporter——

A. I may have seen the reporter, but I didn't make that statement.

Q. And didn't you further state to a Post-Dispatch reporter at that time, "Whether he did it alone or was assisted has yet to be proven?"

A. I have never stated any such thing to a newspaper reporter.

Q. Did you make this kind of a statement at the same time to some reporter: "Robbery and the hopes of obtaining $5,000, which is in a safe-deposit vault in the Laclede Bank, were undoubtedly the motives?"

A. I did not.

1443 Q. Did you make this statement at the same time to the same party, "Just how Barrington, in the event he consummated his crime, hoped to obtain this money through me I do not know, but I believed he had formed some plan by which he thought it could be accomplished?"

A. No; I never made any such statement as that.

Q. Then, did you ever make this statement to the reporter at the same time and place: "Six weeks ago"—is the time I referred to as the 28th of June. "Six weeks ago we moved into the Leland Hotel at 2901 Franklin avenue, and fitted it up with new furnishings. Barrington was received into our place shortly after we took possession?"

A. I never made any statement about moving into the house, or whether the furniture was new or old. Barrington came shortly after we moved in, though.

Q. Did you say it was six weeks ago?

A. No; I never stated any time, because it wouldn't possibly have been. I know I didn't say that.

Q. And didn't you on the 28th day of June, to the same reporter, either at your home or at Bonfils—state to the Post-Dispatch reporter: "It is my belief that Barrington lured him into the country at Bonfils under the pretext of obtaining the $1,000 from some person who does not exist, in order to carry out the foul purpose?"

A. I said this: "That Mr. Barrington told Mr. McCann that he had friends—rich English friends in the neighborhood out there in the county of Missouri—who would loan him $1,000 on his pension papers, and that Mr. McCann went there with him for that purpose no doubt to assist Mr. Barrington in getting the $1,000 on the pension papers." I saw nothing else for his going, because arrangements had been made previous to that and we had been invited to go there that night, or at least it was understood by myself and Mr. McCann,

1444 and when I didn't go and Mr. McCann went out there, that was my suspicion that he went to get this $1,000 on the pension papers.

Q. Well, you didn't state that you believed Barrington had lured him down to that place?

A. I didn't state anything as to whether he was lured, but I said I believed Mr. McCann went with him for that purpose.

Q. You didn't say anything about his being lured out there?

A. No, sir; I made the statement that I believed Mr. McCann went with Barrington to Bonfils to get that $1,000.

Q. You didn't say anything about luring?

A. No; I didn't say anything about luring.

Redirect examination by Mr. JOHNSTON:

Q. Now, Mrs. McCann, speaking about Mr. McCann and Mr. Barrington going out there to the rich English friends, I will ask you if you recollect any time that Mr. Barrington came back to the Leland Hotel just prior to the 18th of June, and made any statement as to where he had been?

Mr. GROVER. We object to that as too indefinite as to time.

COURT. I will overrule the objection.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

A. He did. They had a conversation in regard to going there previous to this.

Q. Well, about how long was it before the 18th of June that he had that conversation?

A. On Tuesday.

Q. Before the Thursday that they went away?

A. Yes, sir; and another time about on Monday and probably later than that—two different times. I remember one time on
1445 Tuesday and a week previous to that, but I can't state the date.

Q. On the first time what, if anything, was it that the defendant, Barrington said, and were you present at the time?

A. I was present at the time. He said, "Jim, I have been in St. Louis County to-day to visit some English friends of mine, and he says they are very wealthy up there—have the finest farm you ever saw, and you and Mrs. McCann are invited out there to spend a day. Will you go?" and Mr. McCann said, "What about it, Jessie?" and I said "I can't; it was too early." He said, "Jim, I would like you to go. You beat me shooting and beat me playing cards, but I can beat you riding horseback."

Q. You say there was an occasion after that when he said something about being in the country on the Tuesday before Mr. McCann disappeared?

A. No; he didn't say about being in the country, but he asked him to go in the country. That was the first time he asked him to go, to get the $1,000 on the pension papers.

Q. Mrs. McCann, did you meet Mr. McCann's mother?

A. I did.

Q. Did you and Mr. McCann live at Mr. McCann's mother's house?

A. We did.

Q. You say you know his mother?

A. I knew his mother, and lived at her house.

Q. For how long a time?

A. I went there about the latter part of November and stayed there at her house and at his sister's house up until the first of April. I went there in 1900, and the following April of 1901 was when we went away.

Q. Who was your brother-in-law?

A. Mr. Barclay.

Q. And you lived there with Mr. McCann?
A. At his mother's or at Mr. Barclay's or at Mr. McCann's sister's, the two places.
1446 Q. Where were they living?
A. At the Winchester Pike, near Lexington, Kentucky.
Q. Now, Mrs. McCann, you say that you went to Bonfils and saw the body there?
A. I did.
Q. Did you see any teeth there?
A. Yes, sir.
Q. Did Mr. McCann in his lifetime have a gold-crowned tooth?
A. He did.
Q. Do you know in the mouth where that tooth was located?
A. On the left side, just the tooth back of the eyetooth.
Q. (Mr. GROVER.) Upper tooth?
A. Upper tooth.
Q. Mrs. McCann, were any teeth shown to you out there at the time you saw the body?
A. None but what I saw as they were placed in his mouth.
Q. As they were placed in the mouth?
A. As they were in his mouth.
Q. Did you see this gold-crowned tooth?
A. I noticed the teeth, but didn't look closely for that. When I got close to him the first particular thing I noticed were his teeth, and they looked as they were before his death—were prominent in his face.
Q. Were there any marks or scars on the abdomen or chest of Mr. McCann by which he could be identified?
A. There were.
Q. Had you ever seen them?
A. I seen them; yes.
Q. Can you describe it, if there were any marks there; and, if so, what were they?
A. On his chest, below his collar bone, about this location, was a mole, about the size of a dime, of brownish hue and slightly raised; and on his abdomen was a scar from a burn.
Q. And that was below the navel?
A. Below the navel.
Q. Now, Mrs. McCann, do you remember the time that you testified you turned back before going to the quarry on Saturday,
1447 and went back with the officers?
A. Yes, sir.
Q. Will you tell the jury why it was you turned back that time—what was said?
A. The officers said that Mr. McCann was in no condition to be seen. They said the body is not in condition for Mrs. McCann to look at; she had better go back, and I got on the car and came back.
Q. Could you say what officer said that?
A. I couldn't say.

Q. And at whose suggestion and consultation was it that you returned to St. Louis?

A. The suggestion of Mr. Kirk and Mr. Cabanne.

Q. Now, Mrs. McCann, you say that Mr. McCann had a ring on his finger when he went away that evening?

A. Yes, sir.

Q. Did he have any other rings; did you know of any other ring that he had?

A. I know of no other that he had.

Q. That was the only ring that he had?

A. That was the only ring he had.

Q. Did Mr. McCann have any other low shoes at the place, other than those that he wore away—did he leave any there?

A. None besides the bedroom slippers, which were tan shoes.

Q. Was Mr. McCann hard or easy on wearing his shoes?

A. He was very hard on his shoes.

Q. Very hard on them?

A. Yes.

Q. Do you know how many pair he would wear in a year?

A. Well, he usually wore about three pair in the winter and two in the summer, besides his home slippers. It was owing to the quality of the shoe how long the shoe would last.

Q. Were there any low shoes left in the house?

A. None.

Q. The pair he wore away were the only pair?

A. The only pair besides the bedroom slippers that belonged to him.

Q. Do you know anything of a revolver being bought—hear a conversation between McCann and Barrington prior to McCann's disappearance?

1448 A. Nothing more than what Mr. McCann told me; I never heard a conversation between them.

Q. Mr. McCann had no revolver himself, had he?

A. He had not.

Q. You say you bought the watch at Ruby's place—picked it out?

A. Yes, sir.

Q. Mr. Brown is a clerk there?

(Objected to as leading.)

A. Yes, sir.

Q. Do you know Mr. Brown?

A. I do.

Q. Where is he employed?

A. Mr. Ruby's.

Q. Was he the gentleman you talked to in buying the watch?

A. Yes. Mr. Brown was probably the one. He really made the sale of the watch, but we talked to Mr. Ruby and another clerk.

Q. That is all.

Recross-examination by Mr. GROVER:

Q. Mrs. McCann, you know Mr. Hume?

A. I do.

Q. Do you know his wife?

A. I do.

Q. Mr. Hume's wife is Jim McCann's sister?

A. Yes, sir.

Q. Mr. Hume and his wife live there near Lexington, Kentucky?

A. They do.

Q. Was Jim McCann ever permitted to enter the Hume House with you as his wife?

Mr. JOHNSTON. We object to that. I will withdraw the objection.

Q. Were you ever received in the Hume home as the wife of Jim McCann?

A. No; Mr. Hume and Mr. McCann had a falling out before we reached Lexington. Mr. Hume owed McCann some money, and he asked him for the return of his money, and he became angry and refused to see him.

Q. The Humes never did receive you in their house as the wife of Jim McCann?

A. For the reason that I told you.

1449 Mr. JOHNSTON. We object.

COURT. Objection overruled.

Q. Did you ever visit there?

A. No; because their family wasn't friendly with Mr. McCann.

Q. And they never did receive you as his wife?

A. No; because——

Q. Never mind the cause.

A. There is always a because.

Q. Isn't it a fact that Jim used to go down to Hume's and stay, but you didn't go with him?

A. He did not. He went to ask for his money and they refused to see him.

Q. But he did go there to visit his sister and brother-in-law and failed to bring you along, did he?

A. He never did. He withdrew our stay there because they weren't friendly.

Q. About this scar on Jim's body just below the navel, how big was that scar?

A. I couldn't say positively; pretty near the size of a half a dollar. Probably a little larger or smaller but on that order.

Q. What kind of a scar was it?

A. It was decidedly round.

Q. Was it long?

A. A little inclined that way. I couldn't describe it positively. I had not looked at it for sometime before his death. I know nearly——

Q. Now, in reference to all that you heard—this conversation between Barrington and Jim McCann when Barrington said that he

had some rich English kinfolks out in the country. Do you remember where that conversation took place?

A. I never heard Mr. Barrington said kinfolks. He said rich English friends. It took place at our dinner table between twelve and one o'clock.

A. You need not be technical—rich English friends out in the country?

A. Out in St. Louis County.

Q. Where did that conversation take place?

A. At the dinner table or lunch table at noon.

Was Oney Morrison there when that took place?

1450 A. Oney Morrison took the lunch and served it; whether she was present when it was stated I don't know.

Q. Was Charley Morrison there?

A. He wasn't in the dining room to my knowledge. He was not.

Q. Did he say he had some rich English friends out near St. Charles?

A. No. He said he was in St. Louis County and he went in the St. Charles car there.

Q. Did he speak about that—he said it was a fine farming country out there?

A. Yes; he said it was beautiful.

Q. And he said to McCann, "I want you and Mrs. McCann to go out there some time?"

A. Yes.

Q. And you said that you were too busy to go out there?

A. I did; and it was too early in the season for picnics for me, anyway.

Q. How long was this before Jim's departure?

A. I can't state positively. It wasn't long. It was in the advance week of that, but I couldn't state when.

Q. Had your business so changed in a few days that you were ready to go out on a trip of that kind?

A. I made no arrangements. That was to go in the daytime, and in the daytime I was employed in my business.

Q. How was it you got it in your head that Jim and you and Barrington were to go out there on the 18th, at night?

A. Because Mr. McCann told me so after we got upstairs on the evening of the 18th.

Q. And in the meantime you had changed your opinion of its being too early in the season?

A. You can go any time to a supper. A picnic is out in the woods, and this was in the house.

Q. Then your claim about going out to see somebody in the country, or rich friends of Barrington's, was not what induced

1451 Jim to go out that night?

A. As I said before, I believe that he went there to get the $1,000 pension money for Mr. Barrington.

Q. Despite your earliness of season and everything you were ready to go out there?

A. I was—to supper.

Q. Did you associate the going out there that night with the statement he had made about seeing the rich English friends at all?

A. I didn't consider as to whether they were those or not. The question ran through my mind, but I never asked the question.

Q. And you went up to prepare to go out there?

A. I partially prepared. I didn't ask who the English friends were. We were asked out with Barrington to friends of his. He didn't state it was the rich friends or not. I supposed they were. I supposed they were the rich friends but I didn't know. They all lived in the same county so far as it was stated to me.

Q. And it wasn't Barrington, it was Jim McCann that came back and told you that you were not to go out after night?

A. Mr. McCann came and told me that I need not get ready; it seemed I wasn't invited.

Q. Barrington didn't state that?

A. No, sir.

Q. But Barrington had invited you to go out there to see the rich English friends in the country before that?

A. He had not. He never invited me to go out before. He invited me the week in advance but not that evening. The first I knew of it was after I left the supper table and came upstairs. Then, Mr. McCann told that I wasn't invited.

Q. You never saw the gold-crowned tooth out at Bonfils at all?

A. I can't state positively that I did.

Q. Do you know whether that is an upper or lower tooth?

1452 A. It is an upper tooth.

Q. That is a gold crown?

A. The gold crown is an upper tooth.

Q. So when you turned back on Saturday, when you were going out to Bonflls to see this body you turned back because the officers said that Mrs. McCann was not in condition to see the body, or the body was not in condition to be seen by Mrs. McCann?

A. I did; they requested me to go back.

Q. And is it not a fact that you turned and went to the car to go back by yourself, except Leonard, who was accompanying you, independent of the officers?

A. It is not a fact.

Q. Isn't it a fact that you boarded that car to the city preceding them that followed you?

A. No, sir.

Q. And isn't it a fact that you stated to any of the officers "I don't thank you for bringing me out here, and I am going back to town?"

A. It is not a fact.

Q. And is it not a fact that you refused to go on down to look at the body with them?

A. It is not a fact.

Redirect examination by Mr. JOHNSTON:

Q. Mrs. McCann, didn't Mr. Hume know you in Chicago?

A. Yes; he visited us there.

Q. Did he live there with you any time?

A. He did.

Q. At the time you and Mr. McCann lived in Chicago?

A. Yes, sir.

Q. At that time was there any litigation existing between Mr. McCann and Mr. Hume?

Mr. GROVER. We object to that as immaterial and irrelevant.

COURT. You may answer that.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

1453 Q. What were the relations between your husband and Mr. Hume up to the time that this litigation commenced?

A. On the best of terms and very fond of one another, and Mr. Hume borrowed quite a good deal of money from Mr. McCann during the time.

Q. Whom did Mr. Hume live with in Chicago when he was up there?

A. With Mr. McCann and I.

Q. At the time you got down to Lexington what, if any, was the litigation between you? Was there any law suit between you?

A. There was no law suit at that time, but Mr. McCann asked for his money and Mr. Hume refused to pay it, and they fell out about it. The law suit came afterwards.

Recross-examination by Mr. GROVER:

Q. Don't you know the reason you were not received in the Hume family in Kentucky was because they didn't recognize you as the wife of Jim McCann?

A. I do not.

Q. Did Mrs. Hume ever go to the house of Jim McCann while he was living with you, and visit?

A. No.

Q. Mrs. Hume never recognized you as the wife of Jim McCann at that time?

Mr. JOHNSTON. We object to that as a conclusion.

Q. How long did Mr. Hume live with you while in Chicago?

A. For a week.

Q. Wasn't that the time Jim McCann was in trouble about this turf exchange business?

Mr. JOHNSTON. We object to that as irrelevant.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

* * * * * * *

1454 Mr. MATHEW KIELY, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name.

A. My name is Mathew Kiely.

Q. Mr. Mathew Kiely, you are chief of police of the city of St. Louis?

A. Yes, sir.

Q. Were you such in the month of June, 1903?

A. I was.

Q. On Saturday the 27th of June I will ask you if you saw
1455 the defendant, Frederick Seymour Barrington?

A. I did.

Q. Is he in court now?

A. Yes, sir.

Q. Where is he sitting?

A. The second gentleman from me to the right.

Q. At what time was it on that day that you saw him?

A. To the best of my recollection it was about 8 o'clock in the evening.

Q. In whose office was it you saw him?

A. Chief Desmond's office, chief of the detectives.

Q. How long did you remain there with him?

A. About three hours.

Q. Did you leave his presence during that time or were you with him all the time?

A. Well, if I left his presence it was just to step outside of the office and to go back again immediately.

Q. Now, Mr. Kiely, I will ask you if any questions were asked of the defendant Barrington, and if so, who did the questioning there?

Mr. GROVER. We object. Sufficient foundation has not been laid. It was not in the nature of a confession.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Were there any questions asked Mr. Barrington in your presence while you were there?

A. Yes, sir.

Q. Who was doing the talking?

A. Chief Desmond principally. I asked some questions myself but Desmond asked the majority of the questions.

Q. What if anything did the defendant say if you remember—Barrington?

Mr. GROVER. We object to that for the same reason.

1456 COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Do you remember any of the statements that were made by the defendant Barrington at that time?

A. He didn't have any statements to make.

Mr. GROVER. We object and ask that that be stricken out.

COURT. That may be stricken out.

Q. Do you recollect anything at that time that was said while you were there?

Mr. GROVER. We object for the same reason.

COURT. You may answer.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

A. Yes, sir, he tried to account for himself during his ride to the Suburban Park and out to Bonfils in the street cars.

Q. Well, he talked about being out to the Suburban Park you say, that night?

A. Yes, sir; not that night but the night of the disappearance of Mr. McCann.

Q. Did he modify or change that story during the night?

Mr. GROVER. We object to that as irrelevant and immaterial—not the proper foundation.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

A. Yes, sir; he made different statements.

Q. How did it differ from the first one made?

Mr. GROVER. We object.

1457 COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. What was the difference—any modification or change in the story, Mr. Kiely?

A. He first maintained that he didn't go any further than the Suburban Park, and they got into a row there and he get knocked down—knocked insensible—and when he woke up he was alone; there was nobody with him, and he made his way back into town, and his second statement was that they got in the car and went to Bonfils,

Q. That was the modification or change in the story?

A. Yes, sir.

Q. Now, during the time that he was making these statements, what were the circumstances under which they were made? Were they made in response to questions, or were there any inducements or threats or promises made by either you or Chief Desmond at the time?

Mr. GROVER. We object to that as leading.

COURT. Objection sustained.

Q. Well, tell us under what circumstances they were made?

A. He made the statements voluntarily—answered voluntarily. The statements were put to him and they were answered. There was no threats.

Q. Nothing said to him outside of questioning?

A. No, sir.

Q. Were you there when the trunk was brought in, Mr. Kiley?

A. I don't remember if I was there when the trunk was brought in. I remember the trunk, but I don't remember if I was there in the office when the trunk was brought in. I saw the trunk there.

1458 Q. And you remained with him about three hours?

A. Yes, sir; except I may have left the office a few minutes and came back again.

Q. Did you leave the office before he did?

A. When Mr. Barrington was ordered locked up Desmond and I left together.

Cross-examination by Mr. GROVER:

Q. He had been arrested a day or two before that?

A. He was, sir.

Q. And he was discharged?

A. He was released.

Q. Released?

A. Yes, sir.

Q. And after he was released he returned there at such times as you indicated for him to return?

A. That was the understanding.

Q. And he did do so, didn't he, Mr. Kiely?

A. Yes, sir.

Q. Now, Mr. Kiely, do you remember when he was making this statement that you are testifying about whether or not there were a number of people present there and some people coming and going among them newspaper men?

A. There were a good many people there. I don't remember whether there were any newspaper men in there at the time. Captain McNamee was present the greater part of the time and Officer Aylward and Officer Kirk—now Sergeant Kirk. They were there for a great portion of the time—maybe not all of the time.

Q. Were there any people there besides all the officers of the police department?

A. There may have been some reporters dropped in and out there I can't recollect any. I am acquainted with all the boys down there but I can't recollect any that were present during this examination.

1459 Q. You have a good many examination similar to that?

A. A good many.

Q. You don't remember this any more than in a general way?

A. This case of course, on account of the importance of it left somewhat of an impression on me, greater than the average run of cases.

Q. Mr. Kiely, did you see the pistol that was taken out of Barrington's drawer?

A. I did not. I don't remember seeing the pistol. I remember seeing a cane that was taken out of the trunk.

Q. You don't remember the pistol?

A. I saw the pistol, but I didn't pay any particular attention to it.

Q. At that time Barrington was being held for murder, wasn't he?

A. On suspicion of murder.

Q. On suspicion of murder?

A. Yes, sir.

Q. Did you examine the barrel of the pistol at all?

A. I did not. I didn't have the pistol in my hand.

Q. You saw it there?

A. I saw it there.

Q. That is all.

A. I would like, if it is in order, to make a statement as to how this case came to me first.

Q. Never mind; that is all.

Redirect examination by Mr. JOHNSTON:

Q. Mr. Kiely, in what manner was it that you first met the defendant?

Mr. GROVER. We object to that as irrelevant and immaterial.

Mr. Kiely, when did you first see the defendant?

Mr. GROVER. We object to that as immaterial.

COURT. Objection overruled.

1460 (To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

A. I saw the defendant first, I think it was on the 25th.

Q. On the 25th of June?

A. Yes, sir.

Q. Under what circumstances, and where?

Mr. GROVER. We object for the same reason.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

A. I saw him in Mr. Keeley's office, assistant chief of detectives.

Q. Under what circumstances, if any, did you see him there?

A. He was released and ordered to report.

Q. You saw him there, nothing else occurred there?

Mr. GROVER. We object to that as irrelevant and immaterial.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

A. Well, he was released and ordered to report back at 10 o'clock the following day.

Q. Now, did you see him on the next day?

Mr. GROVER. We object to that answer and ask that it be stricken out.

COURT. That may be stricken out.

Q. That is all.

1461 Mr. JOHN J. KEELEY, being duly sworn on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. State your name?

A. John J. Keeley.

Q. What is your occupation?

A. Assistant chief of the detectives.

Q. Were you so employed in the month of June, 1903?

A. Yes, sir.

Q. Mr. Keeley, I will ask you if you know Mr. A. E. Mitchell?

A. Yes, sir.

Q. I will ask you if you met him on or about the same evening in June—the same night in June?

Mr. GROVER. We object to that as irrelevant and immaterial.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

A. Yes, sir.

Q. Where did you meet him?

A. At the Four Courts, St. Louis, in Chief Desmond's office.

Q. Do you know Mrs. James P. McCann?

A. Mrs. McCann, yes.

Q. I will ask you whether or not she delivered to you a letter?

A. No; she did not.

Q. I will ask you if you had a letter from her that she had left there as evidence in this case?

A. There was a letter I delivered to Mr. Hencken. It was delivered to me by Mr. Desmond.

Q. Mr. Desmond gave you the letter and you delivered it to Sheriff Hencken?

A. Yes, sir; to Sheriff Hencken.

1462 Q. Do you know to whom the letter was addressed?

Mr. GROVER. We object to that as not the best evidence and as irrelevant and immaterial.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

A. I think it was addressed to Mrs. McCann at the Leland Hotel 2901 Franklin avenue.

Q. That was the address?

A. I think that was the address on it.

Q. And you gave that letter you say to Mr. Hencken?

A. Yes, sir; I took a receipt for it and gave it to him.
Q. Was that the only letter that you gave him?
A. Yes, sir.
Q. Do you know what kind of an envelope it was in?
A. It had a yellow envelope—Missouri District Telephone Message Company or some such name as that.
Q. Did you take a receipt from Mr. Hencken for it?
A. Yes, sir.
Q. Did you deliver any other property to him at the time?
A. Yes, sir.
Q. Have you a record of the receipt that you took?
A. Yes, sir.
Q. Did you make it that time that you delivered the goods?
A. Yes, sir.
Q. Have you got it with you?
A. Yes, sir.
Q. I would like to see it and refresh your memory from it.
Mr. GROVER. We object to that as immaterial.
COURT. Objection overruled.
(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)
1463 Q. I will ask you now to refresh your memory if you have a written receipt signed by Mr. Hencken.
Mr. GROVER. We object to the receipt.
COURT. You can refer to the receipt and see if it will refresh your memory as to what you delivered.
Q. (Mr. GROVER.) Where did you get the receipt—was it sent to you by mail?
A. Mr. Desmond delivered me the property in his office, and I took it with me and delivered it to Mr. Hencken.
Q. And did he sign a receipt while you were there?
A. Yes, sir.
Q. That is the receipt concerning this letter that you have just described, isn't it?
A. Yes, sir.
Mr. GROVER. Now, your honor's ruling.
Q. (COURT.) The first question is you may refresh your recollection as to whether you were able to remember how the letter was addressed?
A. I havn't it here the way the envelope was addressed at all. I have the way the letter was signed, that is all. It is a Missouri District Telegraph Messenger Company, signed "E. M. for Jim."
Q. (Mr. GROVER.) It is addressed to no person at all at the time?
A. It is simply to show that the letter went to Mr. Hencken. It is not a copy of the letter at all.
Mr. GROVER. We object to it.
Q. (COURT.) It was made at the time?

A. Yes, sir.

Q. Now, Mr. Keeley, I will ask you to whom you delivered that letter that is described in your memorandum there and as you describe in your letter—to whom did you deliver that letter?

A. Mr. Hencken.

1464 Mr. GROVER. We object for the reason that foundation is not sufficiently shown.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Cross-examination declined.

* * * * * * *

1484 Mr. WILLIAM DESMOND, being recalled on the part of the State, testified as follows:

Direct examination by Mr. JOHNSTON:

Q. Mr. Desmond, I will ask you if you know Asa E. Mitchell?

Mr. GROVER. We object to that as immaterial.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

A. Yes, sir; I know the gentleman.

Q. I will ask you if you had him at your office and examined him on the 29th day of June, 1903, with relation to the disappearance of James P. McCann?

1485 Mr. GROVER. We object to that as irrelevant and immaterial.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. I will ask you if you had received a letter given to you by Mrs. James P. McCann prior to having Mr. Mitchell in your charge as you stated?

Mr. GROVER. We object to that as irrelevant and immaterial.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

A. Yes, sir; he was there.

Q. This letter that you received from Mrs. McCann and was read over to Mitchell; what did you do with it?

A. I turned it over with the balance of the property to Mr. Keeley, my assistant, to be turned over to the sheriff of this county.

Q. Did you receive more than one letter from Mrs. McCann?

A. One letter.

Q. Is that the letter you showed to Mr. Mitchell at the time he was making his statement?

A. Yes, sir.

Q. Was that letter read in your presence?

A. Yes, sir.

Q. Did you turn over any other letter?
A. Only the one letter.
Q. (Mr. GROVER.) Isn't it a fact that there were two other letters that were turned over to you, investigating this case—one went to Centralia, Illinois?
A. Not from Mr. Mitchell.
Q. Didn't you say a moment ago that this came from Mrs. McCann?
A. Yes, sir; the letter that Mitchell identified.
Q. Did she give it to you or did you get it from Mitchell?
A. Mrs. McCann brought it to the office.
1486 Q. Didn't she bring the Centralia letter also?
A. Yes, sir. Mitchell only identified that one.
Q. There was still another one that Mrs. McCann gave you?
A. I don't remember.
Q. You can't recollect the language of that letter so well that you could look at its contents and say that it was the same language?
A. I don't pretend to say that; no, sir.
Q. (COURT.) Would you recognize it at all?
A. I would recognize something of it, the substance of it. The substance was——
Mr. GROVER. We object to what the substance was.
COURT. Objection sustained.
Q. (Mr. JOHNSTON.) I will ask you if you have any record given to you that Mr. Mitchell was arrested? Given to you from your files?
A. When this statement was made by Mr. Mitchell the letter that was given to us by Mrs. McCann was read and taken down by the stenographer.
Q. (Mr. GROVER.) You didn't pay any attention to any special words at all?
A. Yes, sir; I did.
Q. (Mr. GROVER.) You paid attention to the substance of it?
A. Certainly.
Q. Do you know that this was the exact language?
A. I can't give it verbatim.
Q. (Mr. JOHNSTON.) Mr. Mitchell gave his statement?
A. Yes, sir.
Q. (Mr. JOHNSTON.) Would you recognize that statement and the signature to it?
A. Yes, sir.
Mr. GROVER. We object.
COURT. Objection overruled.
(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)
1487 Q. Look at the words inscribed in red ink on the first and second pages of this statement.
A. Yes; that is about the substance of it.

Mr. GROVER. I ask that that answer be stricken out as irrelevant and immaterial.

COURT. Motion overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. You say you turned that letter over to Mr. Keeley to be turned over to the sheriff of this county?

A. Yes, sir.

Mr. JOHNSTON. We now offer in evidence a copy of the letter delivered by Mrs. McCann to the chief of detectives, that has been referred to.

Mr. GROVER. We object to that as irrelevant, immaterial, and not the proper foundation for secondary evidence laid.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Said copy of said letter is in words and figures as follows, to wit:

"June 22nd, 1903.—Fred, can not return just yet. Am in safe hands and getting better. Never mind sending what I asked you. Have enough for present needs. Take care of Jessie and don't let her worry. Look after house and do all I told you to do. Keep you promise and I will keep mine. E. M., for Jim."

* * * * * * *

1501 Mr. CLIFTON R. WOODRIDGE, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. GROVER:

Q. State your name.

A. Clifton R. Woodridge.

Q. Where do you live?

A. Chicago, Illinois.

Q. What is your business?

A. I am a police officer.

Q. On the detective force?

A. I am.

Q. How long have you been a detective, Mr. Woodridge?

1502 A. I have been connected with the department since October 5th, 1888—about fifteen years.

Q. Done a great deal of detective work?

A. I did some.

Q. Do you know Mrs. McCann?

A. I do.

Q. Did you know Jim McCann?

A. I did.

Q. Do you know in what business Jim McCann was engaged in in the city of Chicago?

A. I know some of the businesses he was engaged in there.

Q. What were they?

Q. (Mr. JOHNSTON.) When was that?

A. In 1902.

Mr. JOHNSON. We object to that as too remote.

Mr. GROVER. The evidence is that he came to St. Louis in October, 1902. I want to show that in Chicago he was engaged in business by which he made two or three hundred enemies, and I want to show that these enemies pursued him, sent threatening letters to him—some of them—and that he was engaged in a mix up of get-rich-quick concerns and in the matrimonial business, and I wish to show that the matrimonial business in St. Louis was a continuation of that business in Chicago, and a removal of it only from Chicago to St. Louis, and that Mr. McCann was connected with it as well as Mrs. McCann, and I wish to show the probability of his being foully dealt with by some of his enemies created by that business.

COURT. You mean to show that he had some enemies in 1902 who had a motive to kill him.

Mr. GROVER. Yes; part of it by this witness. This is just one of the witnesses. I wish to show that the enemies made were a great number throughout the United States, and I wish to show that some of them came after him to St. Louis and wrote threatening let-
1503 ters to him here. He was engaged in that business, made him enemies, and he is found dead and the defendant is charged by circumstantial evidence of killing him. We wish to show by circumstantial evidence that there were other people had motives to kill him while the defendant never had any, or if he had it has not been shown.

COURT. You might show his disposition. The mere fact that he had enemies even six months before sheds no light on this case whatsoever.

Mr. GROVER. I will bring it down to the date of his disappearance.

Mr. JOHNSTON. I insist on my objection.

COURT. I will sustain the objection.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. Do you know in what business Mrs. McCann was engaged in Chicago in 1902?

Mr. JOHNSTON. We object to that as immaterial.

Mr. GROVER. I offer this as relevant evidence in the case on the same theory that if the business that Mr. McCann was in was competent the business she was in would be competent.

COURT. I will sustain the objection.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Mr. GROVER. I wish to show also that Mr. McCann was prosecuted for running a fraudulent matrimonial bureau and for running a fraudulent turf business in the city of Chicago, and convicted.

1504 Mr. JOHNSTON. We object to that as irrelevant and immaterial.

COURT. I will sustain the objection.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. Do you know how many different names Mrs. McCann went under in the city of Chicago in this business?

Mr. JOHNSTON. We object to that.

COURT. Objection is sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the tmie saved exception.)

Mr. GROVER. In order to make my record I will ask: Was Jim McCann ever prosecuted for running a fake turf business in Chicago?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. Did Jim McCann make enemies by running a fraudulent turf commission business in the city of Chicago and a fraudulent matrimonial bureau?

Mr. JOHNSTON. We object to that for the same reason.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. Did James McCann make any enemies in the city of Chicago?

1505 Mr. JOHNSTON. We make the same objection.

COURT. Same ruling.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. Did Jim McCann and Mrs. McCann together run a matrimonial bureau in the city of Chicago?

Mr. JOHNSTON. We object to that.

COURT. Objection sustained.

Mr. GROVER. Now, I ask these questions in reference to time up to September, 1902, and your honor still rules them out.

COURT. Yes.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. I hand you certain papers. Where have you ever seen them before?

A. I have.

Q. Were these papers ever used by Jim McCann in any business in which he was engaged?

Mr. JOHNSTON. We make the same objection.

COURT. Same ruling.

Q. Where did you see them and get them?

A. I got them at 134 East Van Buren street, at the turf investment company of Armstrong, Baldwin & Company.

Q. (COURT.) When?

A. On about September 24th, 1902.

Mr. JOHNSTON. We object to that as irrelevant and immaterial and not a part of the res gestæ.

1506 Q. Did Mr. McCann ever have any connection with that business?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. Did Mrs. McCann ever have any connection with that business?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. Was a warrant sworn out for Mrs. McCann in the city of Chicago for the seizure of advertisements and papers used in a fraudulent matrimonial bureau?

Mr. JOHNSTON. We make the same objection.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. Was her business in the city of Chicago broken up by the police on account of its being a fraudulent business?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. Did not Mr. McCann, on account of that business, make a great many enemies?

Mr. JOHNSTON. We object.

1507 COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. Did Mrs. McCann on account of that business make a great many enemies?

Mr. JOHNSTON. We object to that.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. Are you acquainted with the reputation of Mrs. McCann in the city of Chicago so far as honesty and truthfulness in business is concerned in 1902, September?

Mr. JOHNSTON. We object.

COURT. Objection overruled.

Q. (COURT.) Her general reputation among her associates as to honesty and truthfulness in business?

A. I am.

Q. You may state what it was?

A. Well, it was bad.

Q. Did she have the reputation of running a fraudulent business?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. Was her establishment raided by the police?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

1508 Mr. GROVER. Now, I offer these papers marked "Exhibit 12" in evidence for the purpose of showing this business of Jim McCann's.

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Exhibit 12 is in words and figures as follows, to wit:

1509 EXHIBIT 12.

The Armstrong-Baldwin Co. (Incorporated). Capital stock, $125,000.00.

Turf Commissioners. 134 Van Buren street, Chicago, Ill.

A FEW WORDS ABOUT TURF INVESTMENT.

"Foul cankering rust the hidden treasure frets,
But gold that's put to use more gold begets."
—Shakespeare.

In presenting to your consideration the facts contained in this booklet we but wish to bring to your attention a plain, straightforward business proposition in connection with turf investments.

As the reader is probably aware there is no form of investment to-day that is productive of such immediate and renumerative returns as this when carefully and scientifically conducted; nor is there, indeed, any form of investment in which the results are more disastrous where the operations of the better are conducted in the usual haphazard manner characteristic of the betting of the general public. It is due to this careless, haphazard speculation that bookmaking exists to-day, and, indeed, this erstwhile highly profitable profession is no longer the feast of dollars that once it was. In nothing is the economic principle of the "survival of the fittest" more strikingly demonstrated. The foolish have ever been the prey of the wise, and will ever be. But the fortunes that are daily deposited in the boxes of the bookmakers no longer remain there for the exclusive
1510 benefit of these wary gentlemen, for, with a regularity that is

wearing to them thousands and thousands of dollars are passed out over the back of their stands day after day to swell the coffers of those operators who (to drop into the vernacular of the race course) always "know where they are at."

WHY OUR TURF INVESTMENTS HAVE BEEN AND WILL ALWAYS BE SUCCESSFUL.

In our operations we never make an investment for a client unless the making is justified by information in hand that convinces us it is almost a practical certainty that the result will be as desired. Our track connections are such that the information we secure, in conjunction with the public form displayed, enables our handicappers to calculate with almost absolute certainty the outcome of a race. Nor do we depend upon information other than that gathered from horse owners and stable connections who are actually in our employ, and it is for this reason that many of the long-priced horses that are constantly coming under the wire first will be found credited on the winning side of our clients' account. It is foolish to imagine that one can depend upon public form alone to effect sucessful turf investments. The public form charts are constantly referring to "startling reversals of form;" horses win to the astonishment of the handicappers, the bookmakers, and the public alike. The previous public efforts of the horses in question would indicate, if anything, an absolute inability to even run in company with the horses over whom they win with ease. Consequently the prices quoted against their chances are highly remunerative to those careful ones who are willing to go to the painstaking trouble and the expense necessary to secure the
1511 requisite information.

We combine and utilize every available source of information with every means known to the race course to accomplish our object, and with the capital we have at our disposal this task has not been a difficult one, and we have been unvaryingly successful.

Our operations are confined principally to the Chicago tracks during the summer months and New Orleans during the winter. This is for the obvious reason that it is impossible to operate successfully the business we conduct except where we are in close personal contact with every element having any relation whatever with our operations. This is also done to avail ourselves of track odds, which, as the reader is doubtless aware, run from 10 per cent to 20 per cent higher than the prices obtained in pool rooms.

OUR METHOD OF HANDLING ACCOUNTS.

We accept accounts from $10 upwards, though we would suggest that the amount invested be as much larger than the amount stated as is in accord with your means. This suggestion is made for the obvious reason that the more money we handle for your account, the greater the profit both for yourself and this company.

Upon receipt of a client's remittance the amount is immediately passed to his credit and at once participates in the general investment fund operated by this company. Such proportion of this general fund as seems justified by conditions at the time is put into operation on one race, and the pro rata gain earned by the client's investment is credited on his or her account. By way of illustration:

1512 Suppose your account shows an original investment of $20.00 participating in the general investment fund. In the event that circumstances justified the utilization of 25 per cent of the total fund in investment upon some particular race and the odds against the selection were 5 to 1, then 25 per cent of your investment is brought into play, or $5.00, which played at 5 to 1 would show a gain for your account of $25.00. From this $25.00 is deducted our commission of 20 per cent, which would leave a profit of $20.00 to be passed to your credit, and your original credit of $20.00 is now increased to $40.00, which amount is subject to withdrawal at any time.

Does any form of investment offer such possibilities?

This but illustrates one of the series of operations we conduct for our clients, all of which, of course, are identical, varying only in odds secured and the percentage of the general investment fund brought into play.

REMITTANCES TO CLIENTS.

On the first and fifteenth of each month we mail our clients New York Exchange, covering such amounts as may have been earned by their investments, and this remittance is accompanied by a statement showing the horses played, odds secured, and net profits accruing for the preceding period of two weeks.

FOR OUR MUTUAL SATISFACTION AND PROTECTION.

To the end that our clients may always be fully informed as to the progress of our operations, we have adopted the following system: Each day, at noon, we deposit in the Chicago post-office, letters of notification to our clients, giving the names of the horse or horses to be played for their account that day. In this way the daily papers will keep you fully posted as to the condition of your investment, and you are enabled by these daily notifications to check up our statement rendered on the 1st and 15th of each month.

1513 CONFIDENTIAL.

All business conducted for our clients is confidential, and the envelopes containing remittances and correspondence, as well as daily notifications, give no intimation of their contents. This method has been adopted at the suggestion of a number of clients, for whom we have long done business, and these requests were doubtless made of this company for some good reasons, into which we did not inquire.

OUR CLIENTAGE.

Our clientage is composed of men and women in every walk of life; from the man who invests $10.00 to the one for whom we place thousands, and many of the accounts on our books have come to us entirely unsolicited, and during the period this company has been in operation our success has been such as to give only the highest degree of satisfaction to those with whom we have had the pleasure of business relations.

GENERAL REMARKS.

It is hardly necessary for us to say much more in connection with our business. To all of our operations we invite your most careful scrutiny. To make money for our company we must first make money for you, and this we have done with such ease for our clients heretofore and are in such an eminent position to accomplish in the future, why should we not undertake it for you? There is nothing in connection with horse racing with which we are not familiar.

We confidently assert that there is no company, handicapping agency, bookmaker, or individual on the western turf to-day in a position to secure information of the nature utilized by ourselves.

Expense is a secondary consideration in the matter of getting a 1514 long-period horse under the wire first, and we have never allowed the failure to make the outlay of a few hundred dollars to frustrate our plans. Capital is the keynote of success on the turf, and it is due to this more than to any other one agency that we have been so pheneoenally successful.

Just one word in conclusion in regard to the productive power of money. Surely no one is so foolish as to imagine that the fabulous fortunes of the American millionaires of to-day are the result of daily toil in the workshop or the counting room. Judicious investment was and is the spirit of these colossal accumulations of wealth. Jay Gould began life as a peddler of rat-traps, and ended his career as the most feared man in Wall street, that maelstrom of speculation. Riley Granan, the most sensational plunger known in the history of the American turf and who was known to bet upon a single race the sum of one hundred and fifty-six thousand dollars, was at one time a grocery clerk in Paris, Kentucky. To-day the amount of his personal fortune is unknown, though it is estimated in the millions. It is folly, indeed, in these days of syndicated wealth, organized capital, and powerful commercial and industrial combinations for a man to imagine that he can single handed acquire any portion of the great wealth of the world. You must in some way put others to work for you, and you can only do this through the employment of your available capital, even if it is only $10.00 or $20.00. Put it to work for you, and it works while you sleep. It is the first step towards emancipation from commercial slavery. Day after day, night after night, the clerk and the bookkeeper plod and toil away

for what—merely the food necessary to sustain life, the clothing to shield them from the cold. The future holds no prospect. A year hence their position in life will be the same, and like the blind horse in the treadmill, they will wind out their weary existences
1515 for the bunch of fodder at noon and the ear of corn at night.

Put your money to work, and in a little while you will not have to work yourself. You may grow tired and broken down, your health may fail, but a dollar has no nerves and never grows old. The same dollar that produces dividends to-day will be producing dividends ten or a hundred of years hence, only it will have gathered around it an army of other dollars that increases in geometrical progression, but the work goes on, not with the flagging and weary step of an old and broken man, but with the same unending zest of youth with which it first began its career.

ACQUIRE AN INCOME.

A hundred dollars to-day wisely invested can be made to produce you in time(how soon no one can say), an income of $100.00 per month. It has been done innumerable times, why not let it be done for you? Do not sleep over opportunities, as there is no time like the present. Why spend an old age in misery and despair when ease and luxury might as well be your lot? These are not dreams, they are possibilities that actually exist and of which you should avail yourself.

YOU CAN HANDLE YOUR OWN MONEY IF YOU WISH.

To parties wishing to handle their own accounts we are pleased to offer our services in furnishing them with information as to the winners of one race each day at the small charge of $2.50 per day or $10.00 per week, and 10 per cent of the net winnings resulting upon the selections sent. Some days there does not seem to be a race in connection with which we feel justified in sending out the name of our selection as a winner. A remittance of $10.00 for a week's hire, therefore, means six days of racing, whether these six days are consecutive or whether they cover a period of two weeks.
1516 Immediately upon receipt of our fee we will send by wire for the first day following, upon which we have a selection, the name of the horse for that day, and regularly for each day thereafter upon which we have a selection, so long as your name is upon our books.

HOW TO SEND MONEY.

All remittances should be made in New York exchange, postal money order, express money order, or registered letter. We will not be liable for currency sent in an ordinary letter, as it is liable to be lost in the mails.

Address all letters and make all drafts, money orders, etc., payable to the Armstrong-Baldwin Company, 134 Van Buren street, Chicago, Ill.

ANSWERS TO QUERIES.

When, and in what manner, do you pay dividends?

On the 1st and 15th of each month by New York exchange.

Is amount to my credit subject to withdrawal?

Yes; at any time, without one moment's notice. We remit the same day we receive your notice; same as any national bank. Amount to your credit is always under your control.

Can you furnish references?

Yes; from any bank or banker in Chicago, from any turf association in the country, and from customers all over the United States and Canada who have participated in our earnings and know the value of our form of investment.

Do you want any agents?

We want representatives who will interest themselves for mutual benefits. Write us for particulars.

1517 THE ARMSTRONG-BALDWIN CO., INCORP.—$125,000,
134 Van Buren St., Chicago, Ill.
190 .

GENTLEMEN: Enclosed find dollars, which place to my credit. I hereby authorize you to operate my account according to your plan, with which I am familiar. My liability is limited to the above amount. My share of profits to be remitted to me on the 1st and 16th of each month. I agree to your deduction of 20 per cent on all profits that may accrue to my account. It is further agreed that all or any part of the amount standing to my credit on your books may be withdrawn by me on demand.

Most respectfully,

Name ,
Street and number .

To insure prompt delivery of your mail please write name and address plainly.

Remittances may be made by post-office or money express order, by bank draft, or by currency in registered letter.

J. P. Armstrong, pres. J. H. Johnson, sec'y & treas. R. P. Baldwin, vice-pres.
The Armstrong-Baldwin Co. (incorporated). Capital stock $125,000.00, 134 Van Buren street, Chicago, Ill., turf commissioners.

1518 DEAR SIR: We have the pleasure of enclosing herewith booklet setting forth our method of operation, to which we invite your careful attention. If it does not interest you, please hand it to some friend whom it may.

We believe we have covered the ground fully, and we earnestly insist that you read it through most carefully, as it offers opportunities which, if you take advantage of, mean to you an independent income.

The organization of this company, which has been incorporated with a capital stock of $125,000.00, has been for the purpose of offering to those wide-awake ones who have some means to invest an opportunity to make money quickly and in such amounts as has never before been offered to the conservative investor. While all forms of speculation carry with them a certain amount of risk, our experience in the past has been such that we feel justified in saying that the element of chance or risk in our business has been practically removed, so certain and positive are our operations.

The only compensation to this company is 20 % of the net profits accruing to you and arising from the handling of your account by us. It is therefore evident that our interests are identical with yours, and to make a profit for this company we must first make a profit for our clients. In this connection we inclose a copy of our last statement, which is in itself phenomenal.

We trust you may see your way clear to favor us with a trial account of ten, twenty, or one hundred dollars or more, and in this way convince yourself that we have offered you absolutely the safest and most profitable form of investment in existence to-day for the man of limited means. We are convinced from our past ex-
1519 perience that a reasonable sum with us will produce for you in time a monthly income sufficient for the support of a careful man or woman. The returns from your investment will, of course, be in proportion to the amount invested.

All that is necessary to open an account with us is to fill out the enclosed remittance slip and return to us with the amount you desire invested, which amount will at once become a part of our general investment fund and will be immediately put into active operation for your account.

Awaiting, therefore, your further favors, we are

Yours, very truly,

THE ARMSTRONG-BALDWIN CO.,

Per , *Secretary.*

P. S.—We beg to call your attention to the enclosed article that appeared in the The Chicago Inter-Ocean, of Sunday, July 27th last. This paper is one of the world's greatest dailies.

ASTONISHING TURF INVESTMENTS OF THE ARMSTRONG-BALDWIN COMPANY.

In these days of money and money-getting, one is astonished at the many wonderful methods that have been devised for the acqui-

sition of wealth. Speculation in some form has always appealed to the American mind, and the shrewd men or woman with idle capital to invest is ever on the alert for some means to invest this capital. The opportunities presented are numerous indeed, but there is possibly no form of speculation to-day that presents such magnificent possibilities as investment with turf enterprises. What was hitherto the most risky and uncertain form of investment has been reduced by those shrewd minds, who were wise enough to realize both the opportunities and the dangers, to a point where the danger and
1520 risk has been eliminated, and it is to-day the most remunerative as well as the safest form of investment known to the investing public. So profitable has been this form of speculation that companies have been formed whose sole business is the handling of accounts for parties desirous of availing themselves of these opportunities.

A case in point is the Armstrong-Baldwin Co., turf commissioners, 134 Van Buren street, Chicago, Ill. This concern is a duly incorporated company with a capital stock of $125,000, and is possibly the most successful institution of its kind operating in the United States to-day. It is marvelous, the accuracy with which they forecast the winners of races at the various tracks at which they operate, and by their methods they have won for their clients sums that seem almost incredible to the average business mind. The management of this company is in the hands of some of the shrewdest and most successful men on the American turf to-day—men who are thoroughly familiar with every phase of racing and with every method of accomplishing results on the turf—and they have placed their services and experience at the disposal of their clients at an insignificant compensation compared with results produced. A striking instance of the success of their operations is the account of Mr. Al Dreifus, Real Estate Board Bldg., Chicago. The investment of $100 by this party with the Armstrong-Baldwin Company produced a return to the investor of $3,340 in a period of two months. An account operated by this company for Jno. T. Thomas, of Chicago, for a period of six weeks, amounting originally to only $25, produced $760, which is an even more marvelous record. $10 invested by a lady, whose name
1521 is withheld, produced in one month a return of $172.00. These are but a few instances of what has been accomplished and is being accomplished by this company daily, who handle accounts for clients in every part of the United States and Canada.

A representative called at the office of the Armstrong-Baldwin Co., 134 Van Buren street, Chicago, and was handed one of their booklets, setting forth their method of operations.

It is gotten up handsomely and contains much interesting information to money makers.

[Ed. A. Dreifus. Fine whiskies and cigars. 56 State street. 'Phone Central 1203. 85 Randolph street. 'Phone Central 936.]

CHICAGO, *July 30, 1902.*

The ARMSTRONG-BALDWIN CO.,
134 Van Buren st.

DEAR SIR: I can not commend too highly your method of manipulating turf investments, and the results accomplished for me were gratifying in the extreme. To realize $3,340.00 from an investment of $100.00, which was my experience with you, is astonishing, but it is not so difficult to understand when one comprehends the case and the means your gentlemen employ in making your investments. Everything lies in "knowing how," and your company have certainly reduced this to a science. I feel under such obligations to you that I beg that you will use my name freely as a reference, and I shall only be too glad to recommend you to any parties making enquiries of me.

Again thanking you, I am, gentlemen, yours gratefully,

AL. DREIFUS,
85 Randolph St., Chicago.

1522 Q. I hand you another paper, Mr. Woodridge, headed, "The Bell Advertising Agency." Did you ever see that before?

A. I did.

Q. Where did it come from?

A. From 134 East Van Buren street, Chicago, Illinois; office of the "Bell Advertising Agency," run by Mrs. McCann.

Q. How did it come into your possession?

Mr. JOHNSTON. We object to that as immaterial.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Was this seized by you and the police officers of the city of Chicago in raiding this "Bell Advertising Agency" as a fraud?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. This paper was used in the business of "The Bell Advertising Agency," run by Mrs. McCann?

Mr. JOHNSTON. We object.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Mr. GROVER. Now, I offer this paper in evidence. It is marked "Exhibit 11."

Mr. JOHNSTON. We object.

COURT. Objection sustained.

1523 (To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

(Exhibit 11 is in words and figures as follows.)

Patronized by the best people of the land.

J. S. Main & Co., sole owners and managers.

THE BELL ADVERTISING AGENCY,
OMAHA BUILDING,
134 Van Buren street, Chicago, Sept. 9, 1903.

Miss A, *Nashville, Tenn.*

DEAR MADAM: We are in receipt of your valued favor of recent date in answer to an advertisement of one of our new gentlemen members for whom we have promised to find a wife immediately.

In reply to same we beg to state that your letter has been submitted to him, and he has expressed a desire to become acquainted with you and as soon as it can possibly be arranged.

He is a gentleman of the highest integrity and is independently wealthy, being worth anywhere from $75,000.00 to $100,000.00 in real and personal property. He has traveled extensively and is a man of education and refinement, a lover of home and children. He now feels the need of a good wife in whom he can confide and a home that can be called home. The enclosed picture will give you an idea of his general appearance. Please return the photograph, as it is his property and not ours. Should you become a regular correspondent of his he will send you a larger and more satisfactory one. He is to visit in your section in the near future.

Should you desire an acquaintance kindly fill out the 1524 blank on the other side, write letter of instruction below, omitting answers to any questions that may appear objectionable, and return to us with our registration fee of $2.00 (your photograph also if convenient), and we will place you in communication at once. Now is the time for you to present your claim, as he is very anxious to marry, and we have promised to find him a wife without delay. We are satisfied almost beyond doubt that he will come up to your expectations, as he is a man of many personal charms and will make a good husband. But please bear in mind that he is not the only one that we have. Our books contain hundreds of other handsome and wealthy gentlemen of every age and description (a partial list of which we herewith enclose), and if he is not acceptable to you we will continue to introduce you until you find a gentleman suited to your tastes and aspirations.

This is a golden opportunity for you, one that in all human probability will never enter your pathway again as long as you live, and

why not take advantage of it before it is too late? As to our reliability or financial responsibility, we take pleasure in referring you to any bank, banker, business firm, or prominent citizen of Chicago. So you may rest assured that we will serve you faithfully and to the best of our ability.

In conclusion, we wish to impress upon you the fact that our business with you will be strictly confidential, that we have no connection with any so-called matrimonial papers or any other agency, nor do we sell addresses at so much each, as is the case with other unreliable concerns.

Trusting that we have the pleasure of hearing from you at once advising us of the fact that you intend to become a member of our agency, we remain,

1525 Yours, very truly,

BELL ADVERTISING AGENCY.
Per MAIN, *Ladies' Dept.*

J. S. Main & Co., owners and managers.

Description blank. Bell Advertising Agency, Omaha Bldg., 131 Van Buren st., Chicago, Ill.

Name in full ---------- Miss Alice Zanone.
Address ---------- 930 Cheery st., Nashville, Tenn.
What is your age? ---------- 39. Height? ---------- 5 ft. 1 in.
Weight? ---------- 100 lbs.
What is the color of your hair? ---------- Brown. Eyes? ---------- Blue. Complexion? ---------- Fair. What is your nationality? ---------- American. Religion? ---------- Catholic.
What is your occupation? ---------- None. Income? ----------
Have you a common school or college education? ---------- Yes.
Are you accomplished in music? ---------- Yes.
Drawing? ---------- No. Dancing? ---------- Yes.
What is the value of your property, both personal and real? ---------- None.
What amount do you expect to inherit? ---------- Small amount.
Were you ever married? ---------- No. If so, have you any children? ----------
Were you ever divorced? ---------- If so, what date? ----------
What is your disposition? ---------- Kind-hearted.
Temperament? ----------
1526 Do you dress stylish or plain? ---------- Stylish.
Are you considered handsome or plain? ---------- Plain.
Do you use wine? ----------
Do you care much for society? ---------- To some extent.
Are you fond of home? ---------- Yes; very fond.
Are you fond of children? ---------- Somewhat.
Are you in good health? ---------- Fairly good.
Do you prefer city or county life? ---------- City.

Inclosed find $2.00 registration fee. Date of application, Sept. 19th, 1902.

(Signed) ALICE ZANONE.

NOTE.—Send with description a letter of instruction, telling us what kind of a life companion you want, and we will attend to the matter at once, and reply by return mail.

All descriptions and letters of instruction held strictly confidential.

Remarks.

(Here write letter of instruction.)

I would like to become acquainted with a gentleman not under 41 years old or over 50. An intelligent, refined, and well-to-do gentleman. Prefer one without children, also prefer a Catholic, as I am one myself, but am not so very particular in that respect. I admire a gentleman of high integrity and have no wish to meet any other. Hope you will find one who will come up to my expectations.

Please, above all, don't let my name become known to any one but the gentleman who you put me in correspondence with. Hope to hear from you soon.

Miss A.

1527 Mr. GROVER. Now, I hand you two affidavits for search warrants and two search warrants and ask if you ever saw them before?

A. I did.

Q. What use was made of these warrants, if you know, or these affidavits?

Mr. JOHNSTON. We object.

Mr. GROVER. I propose to show that a criminal proceeding was begun, that Mr. and Mrs. McCann were both connected with this business, and that the business was broken up under these search warrants, and McCann was convicted and fined a hundred dollars.

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Did you compare these papers with the originals on file in Cook County, city of Chicago, State of Illinois?

Mr. JOHNSTON. We object.

COURT. Objection overruled. You may state.

A. I don't think I did. I think there is a certified copy.

Q. Are not these made in your handwriting, Mr. Woodridge?

A. No; this is only a copy of the original warrant certified to by the——

Mr. JOHNSTON. We object to that. The papers speak for themselves.

Q. You know from memory the substance of these complaints, do you not?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

1528 (To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Mr. GROVER. Now, I offer these papers in evidence. Exhibit 13.

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

(Exhibit 13 is in words and figures as follows:)

STATE OF ILLINOIS,
Cook County, City of Chicago, ss:

C. R. Wooldridge, being duly sworn, says that the building known as Chicago Opera House Block, number 112 S. Clark st., room 1008, in city of Chicago, in said county, is a place resorted to for the purpose of unlawful gaming, and that there is concealed in the room closets, vaults, and safes of said building gaming apparatus and implements used, kept, and provided to be used in unlawful gaming, to wit, racing forms, handbook, registered bets, and all other paraphernalia for gambling. Affiant further says that said building is occupied by R. S. Daley; N. C. Clark, alias N. C. Duglas, alias N. C. Collins. This affiant is made to obtain a search warrant for said gaming apparatus and implements.

C. R. WOOLDRIDGE.

Subscribed and sworn to before me this 23rd day of September, 1902.

W. T. HALL, *J. P.*

STATE OF ILLINOIS, *County of Cook, ss:*

1529 The people of the State of Illinois to the sheriff or any police officer or constable of the said county, greeting:

Whereas, C. R. Wooldridge has this day made complaint on oath before the undersigned, W. T. Hall, of the justices of the peace of the said county, that the building known as 112 S. Clark street, room 1008, city of Chicago, county of Cook, State of Illinois, is a place resorted to for the purpose of unlawful gaming, and that there is concealed in the room, closets, vaults, and safes of said building gaming apparatus and implements used, kept, and provided to be used in unlawful gaming, to wit, racing forms, handbooks, registered bets, and all other paraphernalia used for gambling purpose, and that said building is now occupied by R. A. Daley; N. C. Clark, alias N. C. Douglas, alias N. C. Collins; O. L. Wells, alias O. L. Waller. We, therefore, command you, with necessary and proper assistance, to enter in the daytime into the said building,

and there diligently search for the said gaming apparatus and implements, and, if the same or any part thereof be found upon said search, that you bring the apparatus and implements and the persons in whose possessions they are found before the said justice, W. T. Hall, to be disposed of according to law.

Witness, the hand and seal of said justice at Chicago, in the said county, the 23rd day of September, 1902.

W. T. HALL, *Justice of the Peace.*

(Indorsed:) Search warrant for gaming apparatus at No. 112 Clark street, room 1008. I have this 24th day of September, A. D. 1902, executed within described building and recovered following articles: 21 books containing registered bets account, etc., package of racing form, 36 letter files, 27 bundles of circulars, three baskets of letters and etc., one case, one trunk containing pictures, letters and etc.

JOHN KOEBLER, *Police Officer.*

1530 *Affidavit for search warrant.*

STATE OF ILLINOIS,
Cook County, City of Chicago, ss:

C. R. Wooldridge, being duly sworn, says that the building known as 59 Dearborn street, room 512, in the city of Chicago, in said county, is a place resorted to for the purpose of unlawful gaming, and that there is concealed in the rooms, closets, vaults, and safes of said building gaming apparatus and implements used, kept, and provided to be used in unlawful gaming, to wit:

Racing forms, hand books, registered bets, and all other paraphernalia for gambling purpose.

Affiant further says that said building is occupied by O. L. Wells, alias O. L. Waller, N. C. Clark, alias N. C. Duglas, alias N. C. Collins.

This affidavit is made to obtain a search warrant for said gaming apparatus and implements.

C. R. WOOLDRIDGE.

Subscribed and sworn to before me this 23rd day of September, A. D. 1902.

W. T. HALL, *J. P.* (Copy.)

Search Warrant.

STATE OF ILLINOIS, *County of Cook, ss:*

The people of the State of Illinois to the sheriff or any police officer or constable of said county, greeting:

Whereas, C. R. Wooldridge has this day made complaint on oath before the undersigned, W. T. Hall, of the justices of the peace of

said county, that the building known as 59 Dearborn street,
1531 room 512, in the city of Chicago, county of Cook, State of Illinois, is a place resorted to for the purpose of unlawful gaming, and that there is concealed in the rooms, closets, vaults, and safes of said building gaming apparatus and implements used, kept, and provided to be used in unlawful gaming, to wit, racing forms, hand books, registered bets and all other paraphernalia used for gaming purpose, and that said building is now occupied by O. L. Wells, alias O. L. Waller; N. C. Clark, alias W. C. Duglas, alias N. C. Collins.

We therefore command you, with necessary and proper assistance, to enter in the daytime into the said building and there diligently search for the said gaming apparatus and implements, and if the same or any part thereof be found upon said search, that you bring the apparatus and implements and the person in whose possession they are found before the said justice, W. T. Hall, to be disposed of according to law.

Witness the hand and seal of said justice at # 23 Chicago, in the said county, the day of September, 1902.

W. T. HALL [SEAL].
Justice of the Peace.

Search warrant for gaming apparatus at # 59 Dearborn street, room 52.

I have this 24th day of September, A. D. 1902, executed within writ by searching building therein described, and recovered 5 letter files with letters, three baskets of circulars and letters, ten packages of letters, four packages of circulars, 14 blank books.

PETER HERMANSON, *Police Officer.*

I hereby certify the within is a true and correct copy of the search warrant in the case of the people of the State of Illinois vs.
1532 59 Dearborn street, now on file before me this 26th day of February, A. D. 1904.

JOHN PONDRILLE, *J. P.*

Search warrant.

STATE OF ILLINOIS, *Cook County, ss:*

The people of the State of Illinois to the sheriff or any police officer or constable of said county, greeting:

Whereas C. R. Wooldridge has this day made complaint on oath before the undersigned, W. T. Hall, of the justices of the peace of said county, that the building known as 134 E. Van Buren street, room 682, city of Chicago, Cook County, State of Illinois, is a place resorted to for the purpose of unlawful gaming, and that there is concealed in their rooms closets, vaults, and safes of said building gaming apparatus, and implements used, kept, and provided to be used in unlawful gaming, to wit, racing forms, handbooks, registered

bets, and all paraphernalia used for gambling purposes, and that said building is now occupied by John Wells, alias J. H. Johnston; J. P. McCann, alias J. P. Armstrong; O. L. Wells, alias O. L. Weller.

We therefore command you, with necessary and proper assistance, to enter in the daytime into the same building and there diligently search for the said gaming apparatus and implements, and if the same or any part thereof be found upon said search that you bring the apparatus and implements and the person in whose possession they are found before the said justice, W. T. Hall, to be disposed of according to law.

Witness the hand and seal of said justice at Chicago, in the said county, the 23rd day of September, 1902.

(Copy) W. T. HALL, *J. P.*

(Indorsed:) Search warrant for gaming apparatus at No.
1533 134 Van Buren street. I have this 24th day of September, 1902, executed within writ by searching within described building and recovered the following articles: Two typewriters, 34 boxes of circulars, one basket of letters, two bundles of circulars, two books containing registered bets, and etc., one letter file containing letters, and etc.

J. KOEHLER, *Police Officer.*

Mr. GROVER. I now offer four State transcripts, State warrant, and criminal complaint, issued on the 23rd of September, 1902, showing judicial proceedings—criminal proceedings—against James McCann and Oscar Wells, and ask you if you ever saw them before.

Mr. JOHNSTON. We object to them as irrelevant and immaterial.

COURT. Objection sustained.

Mr. GROVER. We offer to show that these are true copies of the originals on file in Chicago.

Q. (COURT.) I think the matter is irrelevant. The objection will be sustained.

Mr. GROVER. I offer them in evidence—exhibit 14—and save my exception to the court's ruling.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

(Exhibit 14 was in words and figures as follows:)

State transcript.

STATE OF ILLINOIS, *County of Cook, ss:*

Justice court, city of Chicago, district.

This case came from Justice W. T. Hall on change of venue. The people of the State of Illinois vs. A. Wells, alias Weller; before
1534 John K. Prividille, esquire, justice of the peace. Crime assuming corporate name, in violation of section 220, chapter 38, of the revised statutes of Illinois. Case called for trial September 30th, 1902. The plaintiff and defendant present in court.

Evidence as follows, to wit: Witness sworn and their evidence heard; whereupon it is ordered and considered by the court that the said defendant be fined the sum of $100 and costs; fine paid.

Witnesses: Officers Wooldridge, Germanson, Vaughan, and Kohler, °/₀ of chief's office.

I certify that this transcript contains a full and perfect statement of all the proceedings before me in the above-entitled case. John K. Prividiville, esquire, justice of the peace.

State transcript.

STATE OF ILLINOIS, *County of Cook, ss:*

Police court, city of Chicago, 1st district.

The people of the State of Illinois vs. O. L. Wells, alias Weller, before W. T. Hall, esquire, justice of the peace.

The crime assuming a corporate name, in volation of section 220, chapter 38, of the revised statutes of Illinois. On written complaint under oath by C. R. Wooldridge, warrant issued to Peace Officer Germanson and Vaughan, returnable forthwith.

Return served by arresting defendant and bringing him to court.

Written complaint filed by C. R. Wooldridge. Case called for trial September 25th, 1902, 9 a. m. The plaintiff and defendant present in court.

1535 Evidence as follows to wit: Change of venue granted to John K. Prividiville, J. P.

Witnesses: C. R. Wooldridge, Germanson, and Vaughan. Detective headquarters.

I certify that this transcript contains a full and perfect statement of all the proceedings before W. T. Hall, justice of the peace, in the above-entitled case, and that I am his successor in office and the legal custodian of his docket and files. D. R. Cochrane, justice of the peace, successor to W. T. Hall, J. P. Horace Clinton, clerk of police court.

Criminal complaint.

STATE OF ILLINOIS,

County of Cook, City of Chicago, ss:

The complaint and information of C. R. Wooldridge, in said county, made before , esq., one of the justices of the peace in and for said county, on the 23rd day of September, 1902, said complainant being duly sworn upon his oath, says that on, to wit the day and year and in the county aforesaid, that J. P. McCann alias J. P. Armstrong, John Wells, J. H. Johnson, O. L. Wells, alias O. L. Waller, alias W. R. Baldwin, did commit the offense of putting forth an advertisement for the purpose of soliciting business, a corporate name, to wit, the Armstrong-Baldwin Company, not being in-

corporated, on or about the 17th day of September, A. D. 1902, in 220, chapter 38, contrary to the form of the statute in such case made and provided. That this complainant has just and reasonable grounds to believe, and does believe, that said J. P. Mc-
1536 Cann, alias J. P. Armstrong, John Wells, and J. H. Johnson, O. L. Wells, alias O. L. Waller, and W. R. Baldwin committed said offense, and therefore prayeth that he may be arrested and dealt with according to law.

Subscribed and sworn to before me this 23rd day of September, A. D. 1902.

W. T. HALL, [SEAL.]
Justice of the Peace.
C. R. WOOLDRIDGE. (*Copy.*)

State warrant.

STATE OF ILLINOIS,
City of Chicago, County of Cook, ss:

The people of the State of Illinois to all sheriffs, coroners, constables, and police officers within said State, greeting:

Whereas complaint in writing under oath has been this day entered before the undersigned, a justice of the peace within and for said county, by C. R. Woolridge, that J. P. McCann alias J. P. Armstrong, John Wells, alias J. H. Johnson, O. L. Wells, alias O. L. Waller, alias W. R. Baldwin, did commit the offense of putting forth an advertisement for the purpose of soliciting business, a corporate name, not being incorporated in this State.

That said offense was committed in said county and State and that said complainant has just and reasonable grounds to believe that J. P. McCann, alias J. P. Armstrong, John Wells, alias J. H. John-
1537 ston, O. L. Wells, alias W. R. Baldwin, committed said offense vs. 220, chapter 38, R. S.

We, therefore, hereby command you forthwith to arrest the said J. P. McCann, alias J. P. Armstrong, and bring them before me at my office in the 1st district police court-room in the said city, or in case of my absence or inability to act before any other judge or justice of the peace of said county, to answer to the people of the State of Illinois on said charge, and abide such further orders as may be made concerning said charge.

And make such service and return hereof as the law directs.

Given under my hand and seal at my said office this 23rd day of September, 1902.

W. T. HALL, [SEAL.]
Justice of the Peace.

(Endorsed:) State warrant.

State transcript.

STATE OF ILLINOIS, *County of Cook, ss:*

Police court, city of Chicago, 1st district.

Before W. T. Hall, esq., justice of the peace.

THE PEOPLE OF THE STATE OF ILLINOIS,
vs.
JAMES P. MCCANN.

Crime, assuming a corporate name in violation of section 220, chapter 38, of the Revised Statutes of Illinois. On written complaint under oath by C. R. Wooldridge. Warrant issued to Police Officers Koehler and Kuhn, returnable forthwith. Returned served by arresting defendant and bringing him into court.

Written complaint filed by C. R. Wooldridge. Case called
1538 for trial Sept. 25th, 1902, 9 a. m. The plaintiff and defendant present in court.

Evidence as follows, to wit: Change of venue, granted to John K. Prindiville, J. P.

Witnesses: C. R. Wooldridge, Koehler & Kuhn, detective headquarters.

I certify that including copies of complaint and warrant attached contains a full and perfect statement of all the proceedings before W. T. Hall, justice of the peace, in the above-entitled case, and that I am his successor in office and the legal custodian of his docket and file*d*.

D. K. COCHRANE, *Justice of the Peace.*
Successor to W. T. Hall, Justice of the Peace.
HORACE CLINTON, *Clerk of Police Court.*

State transcript.

STATE OF ILLINOIS, *County of Cook, ss.:*

Justice court, City of Chicago, District.

This case comes from Justice W. T. Hall, on change of venue.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
J. P. MCCANN.

Crime, assuming corporate name in violation of section 220, chapter 38, of the revised statutes of Illinois. Case called for trial September 30th, 1902, the plaintiff and defendant present in court.

1539 Evidence as follows, to wit: Witnesses sworn and their evidence heard, whereupon it is ordered and considered by the court that the said defendant be fined the sum of one hundred dollars and costs. **Fine paid.**

Witnesses: Officers Wooldridge, Germanson, Vaughn, and Koehler, c/o chief's office.

I certify that this transcript contains a full and perfect statement of all the proceedings before me in the above-entitled case.

JOHN K. PRINDIVILLE, [SEAL.]
Justice of the Peace.

Q. How many different names had Mrs. McCann in the city of Chicago?

Mr. JOHNSTON. We object to that as immaterial.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. Was James P. McCann known as James P. Armstrong, president of the Armstrong-Baldwin Company in Chicago?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Cross-examination by Mr. JOHNSTON:

Q. What is your name?

A. Clifton R. Wooldridge.

1540 Q. That is all.

Redirect examination by Mr. GROVER:

Q. Officer Woolbridge, did you ever had a conversation with Mrs. Jessie McCann in which you told her that if she would give you fifty dollars that she could run her matrimonial bureau as long as she pleased, or anything of that kind?

Mr. JOHNSTON. We object to that as irrelevant and immaterial. Well, I will withdraw the objection.

A. I never had a conversation with Mrs. McCann in my life until I met her here in this court-house the other day.

Q. When you had a search warrant for her she avoided arrest and you couldn't catch her?

Mr. JOHNSTON. We object.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Q. And her attorney came to you and offered to quit the business and leave town and in that manner got rid of the warrant that was against her?

Mr. JOHNSTON. We object to that.

COURT. Objection sustained.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted and at the time saved exception.)

Recross-examination by Mr. JOHNSTON:

Q. You didn't get the fifty dollars from her?

A. No, sir.

1541 Redirect examination by Mr. GROVER:

Q. Did you get the fifty dollars from her?

A. I never had a conversation with her in my life until I came down here, in this court-house.

Q. That is all.

* * * * * * *

1618 FREDERICK SEYMOUR BARRINGTON, the defendant, being duly sworn on his own behalf, testified as follows:

Direct examination by Mr. GROVER:

Q. You are the defendant in this case?

A. I am.

Q. When you rode from the mounted district police station to the Four Courts after your second arrest, when you were in the custody of Officer Cabanne and rode in the patrol wagon, what coat did you wear?

A. The same one that I have on now, a Prince Albert.

Q. State what other coat of that kind you had at that time or since?

A. I had no other of this pattern—no Prince Albert—I had none.

Q. Now, you stand up please and take off this coat.

A. (Witness complies.)

Q. This is the coat that you had on that night in the patrol wagon?

A. Yes, sir.

Q. Now, I will ask you what you find in the tails of this coat behind?

A. I refused to allow Mr. Carp, a tailor in the Jaccard Building, to put any pockets in it, because they generally bulge out at the end.

Q. There were no pockets in it?

A. No, sir; I wouldn't allow them to go in.

Mr. GROVER. I offer this coat in evidence.

Mr. JOHNSTON. We object to it as immaterial. He has had the coat a year.

COURT. You may offer it.

(Admitted.) Insert Exhibit 20.

Said coat is hereby made Exhibit 35 of this bill of exceptions.

1619 Q. Where has this coat been since your second arrest?

A. In my possession.

Q. Whereabouts?

A. In the Four Courts and jail here in Clayton.

Q. What coat have you worn principally since the second arrest?

A. What I have in my cell now and that. I have some others in my cell.

Q. You have no other Prince Albert coat?

A. That is the only Prince Albert coat.

Q. Now, when you were taken to the mounted district police station, describe how you were searched.

A. I was taken before the sergeant's desk, and Detectives Kirk and Cabanne were there. They took off my coat, took off my vest. I am not positive whether Kirk gave the coat and vest to Cabanne to hold, but he gave it to somebody, and he made me hold my arms out and searched me thoroughly.

Q. What did he do with your pockets in making the search?

A. Turned them wrong side out.

Q. What property was taken from you at the time?

A. I couldn't tell you everything. There was property lost there. It is not there.

Q. Have you ever had that property since?

A. Never; the prosecuting attorney had it.

Q. In going from the mounted district station down to the Four Courts, or after you arrived at the Four Courts, or at any time, state whether or not at any time from the time of your second arrest you had in your possesion any of the jewelry that has been presented here as jewelry having been found on the mud guard of the patrol wagon?

A. Never.

Q. Did you have some property of your own—some jewelry of your own—that was taken from you on this search?

A. I did.

Q. State what it was.

A. A watch, chain, locket, opal pin, ring.

1620 Q. Will you let me have those articles, please?

Mr. JOHNSTON. I will send for them now.

Q. Do you know or have you the slightest suspicion as to who placed that jewelry on the mud guard of the wagon, if it was found there?

Mr. JOHNSTON. We object to the words "slightest suspicion."

COURT. You may answer the question, yes or no.

A. I do not.

Q. You have no knowledge of who placed it there?

A. Nothing whatever.

Q. Did you ever have anything to do with any of that jewelry from the time you left the McCann house on the 18th day of June last up until the present time?

A. Mine or Mrs. McCann's jewelry?

Q. I mean the jewelry that was found on the mud guard?

A. No. I had never seen it.

Q. Do you know how it go there?

A. I have not the slightest idea.

Q. State whether or not you placed or attempted to place anything out of your pockets on that trip down to the Four Courts from the mounted station, either on the mud guard or in the seat or otherwise?

A. I had no opportunity to do so; I was all the while watched.

Detective Cabanne had a hold of my left hand this way [illustrating]. My right was loose. With my right—it was a hot, sultry evening—I drew my handkerchief out and it dropped on the floor. I couldn't pick it up—didn't have an opportunity. Deputy Sheriff Bellairs picked it up for me. That was the only thing I remember in regard to that.

Q. Is this the watch and chain that was taken from you when you were searched?

1621 A. There is a photograph in the back of it. If there is a photograph of a lady there, it is.

Q. That is the same one?

A. Yes.

Q. When you returned to the McCann residence on the 19th day of June and went up to your room, state whether or not the watch that was found, as it was said, on the mud guard of the patrol wagon—state whether or not that watch or any of the jewelry that was with it was in your room or upon your bed or in anywise in your possession.

A. I have already stated that I have never seen it.

Q. You had this watch?

A. I had, but I wouldn't say whether or not I put it on the bed or where I put it. I have no remembrance of that.

Q. How did you become possessed of the cane that has been exhibited here in evidence?

A. Mr. McCann gave it to me and I told Mrs. McCann that he had given it to me.

Q. Louder.

A. Mr. McCann gave it to me, and I told Mrs. McCann that he gave it to me on the morning of the 19th, and she knew that I had it. I think she agreed to that at the coroner's inquest.

Q. You told her that on the morning of the 19th?

A. On the morning of the 19th, I did, when we talked together.

Q. When you returned from Bonfils, on the morning of the 19th, what was the condition of your clothing?

A. Muddy. The lower extremities were muddy and some blood spots on them; but what Charley Morrison testified to—a big blood spot on the back, I knew nothing of that; it was a wet morning and walking along the grass and weeds which were, I suppose, about that high, my trousers got in the weeds and got wet, and the dust along the road got on my trousers, and it had been raining.

1622 Q. Now, describe how you came to go out to Bonfils on the 18th day of June last, and who went with you.

A. Mr. McCann went with me.

Q. How did you come to go out there?

A. That evening, I suppose it was about half past seven—I am not sure about the time—we went up to the drug store to get some headache powders, and while in the drug store Mrs. McCann telephoned to some one; I don't know to whom, and he said "Come along, Fred;

we will go up to the Suburban Garden." I forgot one point; he went across the street to the saloon and got some drink there—I think it was a bottle of Budweiser—and I took a glass of soda water, and we took a car immediately afterwards—I suppose it was a quarter to 8—between that and 8 o'clock—and went towards the Suburban Gardens.

Q. When you started away from the house what money, if any, did Jim McCann have?

A. All I know that he had was five dollars that Mrs. McCann had given him—a $5 gold piece. He went across the street to get some cigars and came in the house, and what he had remaining I don't know.

Q. State whether or not you remember of his having any diamond in his bosom that night.

A. I didn't notice it if he had.

Q. Where was this picture taken?

A. At the Suburban Garden the night of the 18th of June, a little after 9 o'clock; I think between 9 and 9.30.

Q. Flash light?

A. Flash-light photographs.

Q. Did you have on a pin at that time?

A. I did.

Q. State what it was.

A. It was about a ¾-carat diamond stick pin; a very small one.

1623 Mr. GROVER. I offer this picture to the jury especially to show the diamond in the bosom of Barrington, and also to show the bosom of McCann.

COURT. That is already in evidence.

Mr. GROVER. Yes, I want them to especially look at that pin.

Q. Now, on the day previous where had you been?

A. Out to Bonfils in the afternoon.

Q. Who was with you?

A. Mr. McCann.

Q. Anybody else?

A. No; no one else.

Q. How did you come to go out there?

A. Mr. McCann had some business out there; he wouldn't tell me what the business was, although a few days before he told me that he had some trouble with some man who wanted to borrow some money about a racing scheme, and he said he was going out to see them. Some one called him up three or four times from the Planter's Hotel about it.

Q. Had you ever been to Bonfils before?

A. Never in my life; that was the first time.

Q. What time was that?

A. Wednesday afternoon, June 17th.

Q. What time did you get to Bonfils station?

A. I am sure of that; it was after 2 o'clock. I am sure of that.

Q. State what happened after you got there.

A. When we got there Jim and I went out to the station over a little bridge. There is a bridge across the track there, and we crossed on the right hand—at least I crossed down while he went
1624 up the road to the right. Not south—north; and he told me he would be back in a few minutes. I went down to see the water. It was washing up over the land, and a little boy came up to me and told me, "You can't go through; you are not permitted. It is at danger mark." And I came back to the station with the little boy—that little depot there—and I stayed talking with that boy until the time that we went back on the car—till McCann returned and we went back on the car. I didn't go away from the station at any time, except a little ways over the bridge and down the line on the right of way.

Q. Did you go south at all, down Taussig avenue?

A. Only over the bridge, up towards the station.

Q. Now, the little path that goes up from Bonfils station, is that the path that you took to go up on to the bridge?

A. I don't follow you.

Q. I will show you in a minute; here is the station, here is the little path, and here is the bridge?

A. We cut across there, and there is the bridge, and I went down that side of the bridge, down the lane up which the boy came, running down from the station. He called me back and I went straight down the lane then.

Q. So that you didn't go even as far south on Taussig avenue as where the little path comes in?

A. There is a path that crosses diagonally there, and as far as the path I went and I turned with the little boy and stood at the station until Mr. McCann came back.

Q. Where were you on Saturday, the 13th day of June?

A. We left the house in the afternoon.

Q. In the afternoon or the morning?

A. Between 12 and 1. Mr. McCann, Mrs. McCann, Tom Leonard, and I. We took a carriage from the Leland Hotel and went to the race track and we put in the whole of the afternoon. I think
1625 it was about six o'clock when we returned.

Q. Now, on the night of the 18th when you left the house Mr. McCann made the statement, after he received the telephone message, that you were going West?

A. He didn't receive a telephone. He went and telephoned himself, at the drug store at Compton avenue, and he said, "I am going to meet those parties, Fred; I am going out right away."

Q. What?

A. He said he was going to see the parties he missed yesterday. He didn't see the parties the day before; he missed them.

Q. Do you know what the nature of that business was he went to see them on?

A. I do.

Q. From his statement, and from the man's statement? I mean on the previous day.

A. I did not know the nature of it that day. Jim told me on the Thursday afternoon—he told me the nature of it; but I seen the men previously, because he called them up at the Planter's Hotel, and I had been down at the Planter's Hotel to see the party.

Q. What did he say when you started out on the evening of the 18th?

A. From the house?

Q. Yes.

A. We were going to the drug store for headache powders.

Q. Then what else did he say?

A. Well, when we were at the drug store, after getting the headache powders, he went over to the saloon and took a drink, and I took a drink, and then he said, "I will get that business off my hands," something to that effect, "Come along." It was characteristic of Jim McCann, if he took anyone out he would not tell
1626 them where he was going or what he was going to do; just say, Come along.

Q. What kind of a man was he, so far as being imperative or otherwise?

A. Imperative; commanding?

Q. Yes.

A. That was his characteristic; commanding.

Q. Well, where did you go then from this saloon?

A. We were to get off at Wellston, but shortly before we got there——

Q. What car did you take?

A. The Suburban car.

Q. You went to Wellston?

A. We were to get off at Wellston, but before we got there he turned to me and said, "Fred, I don't think we can catch that car." I asked him what time it left. "Well," he says, "it leaves there at 9 o'clock."

Q. Well, did you speak to anybody about it?

A. He told me to ask the conductor what time the next car went, and I don't know whether it was the conductor I asked or who he was—he was in conductor's clothing, I believe—and he said "You won't be able to get another one before 10 o'clock," so I told Jim about it. He says, "We are not going to hang around here until 10 o'clock. We will go out to the Suburban Garden."

Q. Then what did you do?

A. Went to the Suburban Garden.

Q. Remained on the car?

A. Yes, sir; we didn't get off at Wellston. I think it was five or ten minutes after 9 that night. It was a few minutes before 9 when we asked the conductor.

Q. You went to the Suburban Garden?

A. Yes, sir.

Q. What happened at the Suburban Garden?

1627 A. We went on the scenic railway; went shooting, and went to a table and had some drinks and met some friends there, and, as usual when he met them, he let his money go very freely.

Q. That is where you had the picture taken?

A. Yes. We happened to be passing the place at the time and he said: "Come on, Fred, let us have another one taken." I said "Mrs. McCann isn't present;" and he said, "That cuts no figure; come on." Shortly before that Mr. McCann and Mrs. McCann and I had photographs taken by flash light, and after that his money ran out, and he met a few more friends, and he asked me, "Have you any money?" and I says, "Not much, Jim;" and I searched and found $27.50. "Well," let me have that, he says; "you can have it to-morrow again." This was not the first time he done that. Jim McCann was a man that was honorable that way, so I let him have what I had in my pocket; that was $27.50.

Q. What had become of the $5.00?

A. Well, it didn't take long to go when Jim had it in his hands.

Q. Well, then what did he do?

A. We stayed around there till about five or ten minutes to ten—just time enough to catch the car at Wellston: I think it was two or three blocks' distance.

Q. Then what did you do?

A. Took the car at Wellston.

Q. Took the car at Wellston?

A. Yes. I believe it was about ten o'clock. I am positive of the time.

Q. And where were you going?

A. I understood we were going to the place where we went the day before. That is what he had told me.

Q. Now, when you got on the cars and started towards Bonfils, what statement did Mr. McCann make to anyone, if you know anything about it?

A. When we first got on the car I said to him: "Jim, we
1628 don't want to go out there this time of night." "Come on," he said. I said "I don't see any good in doing it; wait till to-morrow. "Well," he said, "I have telephoned and I am going, and you had better come." So I went and sat down in the rear of the car. At first he sat by the side of me. I told him I had a headache and didn't want to talk, and he got up and took a seat in front of me. Soon after the car started to go from Wellston and he began talking to a lady. I have since learned that she was a missionary.

Q. State what statement he made to anybody about the nature of his trouble.

A. He never made any statement at all to me, but he told the conductor that he was going out on business. He told this lady he was going out on business. He didn't tell me that, but I knew in the afternoon that he was making arrangements for it.

Q. You knew he was making arrangements to go out on that night?

A. No; not exactly that. I knew he had told me that he missed that party the afternoon preceding—that he went out to Bonfils and he intended to get the matter off his hands. I didn't know until I got to Compton avenue to the drug store, when he telephoned, that he was actually going there that night. When we started from the house I don't think he knew that he was going there himself, until he telephoned from the drug store.

Q. State what kind of a nature Mr. McCann had about starting one place and going another?

A. Well, he was rather impulsive. He would act on the spur of the moment.

Q. Impulsive, and acted on the spur of the moment?

A. Yes, sir.

1629 Q. How large a man was he?

A. Well, I believe his weight was somewhere about from 202 to 209. Mrs. McCann said 209, but I remember his having his weight taken at the Suburban a few nights before, when Mrs. McCann was present, and I think he was 201. I am not sure.

Q. How was his physical character as to strength?

A. Fine, noble, handsome fellow.

Q. When you got out to Bonfils Station tell what happened; commencing with the station?

A. He preceded us off the car and we went across that little path. The weeds were high on each side of it and only one, according to my impression, could walk that path at that time. He preceded me and got out in the road. He said I intend to meet some one here and there was no one there.

Q. At the station?

A. Yes; at the station or depot, and I said "Jim, let us go back; you had a fool's errand yesterday, we don't want another at this late hour at night." He said "Come on, let us go down a little way." So we went down a little way, and there was a low whistle.

Q. What did you see?

A. Well, I couldn't tell you exactly the place, but if you show me that map I will show you exactly where it was. We came out of the car here.

Q. Come around before the jury.

A. Here is the place by the depot. We got off the car here and went down to this path. Jim McCann preceded me. He expected to meet some friends there and they weren't there. We went down past this house; it was a very dark night, and we went down to about there, and when we got there on this side of the road—that is, on the left-hand side of the road—there was a kind of a buggy with a hood over it and a horse. I am not prepared to say whether it was—I would not say whether it was a bay or a roan horse. It was not a

1630 white horse. We stood there a moment and when we got to the place I have described on the map these men limped up in the darkness. The larger one said to Jim, "You made a nice fool

of me to-night; why didn't you come up." He said "We missed the car and have been at the Suburban Garden." At that moment Jim took a cigar out and lit it on the wheel and the same moment I saw the larger man take a revolver out of his right hip pocket and he put it in his pocket and his hand on it. Noticing that, I called Jim to one side and I told him I didn't like the looks of things and said I shall not go any further. He says "All right; we will be gone only twenty minutes." I said "I won't go when a man does like that; I am not going any further," and that moment a blow came over my head and I screamed out to Jim and Jim came instantly to my relief. It was I that cried out.

Q. Had anything taken place before the outcry?

A. He got the revolver and was rushing on to me, when Jim came in and he fired. There was one shot fired; I never heard another. The only shot I heard fired was the first, but I don't know whether it did any harm or not or whether it went in the air. I didn't see it. It did not hit me.

Q. Now, at the time this shot was fired, did you have any pistol with you?

A. I did not; no idea of taking a pistol.

Q. Did you have your pistol with you that evening?

A. I had not.

Q. Had you taken your pistol to Bonfils?

A. I did not take it. In fact, I did not know I was going to Bonfils when I started out.

Q. Well, you were knocked down?

A. I was.

Q. About where were you when you were knocked down?

A. Just this side of the tree; the nearer side of the sta-
1631 tion, to the left-hand side; just the other side of the buggy.

Q. Is it south or north of the big tree?

A. North of the big tree; this side near the station, near the depot.

Q. What was the condition when you were knocked down? Were you conscious or unconscious?

A. Well, after I was knocked down I got to my feet again, and I called upon Jim to help me, and Jim came to my relief, and I rushed across the road, and just below that tree where I have indicated I rushed into some bushes. There was a little path that you go up to one side that would go up to the quarry, and they rushed after me right into that place, both of them, and I remember no more until the following morning.

Q. What time did you recover the next morning?

A. I don't know; but I remember it was break of day and raining, and my clothing was saturated with water, the rain coming in on me. What the weather bureau says about the thunder I don't know. I have no knowledge of it. I don't remember it.

Q. The saturation of your clothes, then, was with what?

A. Water. They were not saturated that you could wring them, but they were quite wet.

Q. Were there any marks of injury on you as a result?
A. Some.
Q. State what they were.
A. A cut across the face here; wound on the top of the head. My knees were cut; a large bruise on both knees, and there was no wound on the back.
Q. How about your fingers?
A. I was putting my hands up to defend myself.
Q. What condition were they in?
A. Swollen; I couldn't use them afterwards.
Q. What condition was your thumb in?
1632 A. That was black; that is where they cut me when I held my hand across my face.
Q. State whether or not any hemorrhage took place.
A. Hemorrhage from my nose and from the knee.
Q. When you returned to the Leland Hotel, state whether or not there was any blood on the back of your coat.
A. Not to my knowledge. There was on the front here, down here, and on the vest. That vest I have never seen from that day to this. There were spots the same as you see—very small spots that came from my nose.
Q. State whether or not your drawers were saturated with blood.
A. Not to my knowledge. There may have been some from this right knee, but I don't know of any from the left knee. The right knee did bleed I know, and there were bruises on it; others on the left leg, but I don't believe it bled; but the right leg did bleed.
Q. From that time to the present day have you ever seen Jim McCann?
A. I have never seen him. No one wishes more to see him than I do.
Q. Did you see the body at Bonfils?
A. I did.
Q. State whether or not that was Jim McCann.
A. I can't be positive about that, but I never have believed it, that that was Jim McCann's body at Bonfils, and I don't believe there was a man there that observed it more closely than I observed that body.
Q. You may state where you returned the following morning from Bonfils—when you returned on June 19th and went to the
1633 Leland Hotel, what conversation, if any, took place between you and Oney Morrison and Charles Morrison, the negro servants.
A. There was no conversation whatever took place. That is a tissue of falsehoods, but I did call Charley to the bathroom to take my clothes down and clean them and dry them and put them on the line to dry, and from that day to a few days ago when I saw them out in the room to inspect I have never seen the clothing. What the Morrison say in regard to a conversation between us isn't true—did not take place. The only conversation I had that morning was with

Mrs. McCann in the back room upstairs. She came in to me a little after 11 o'clock and I told her where I had been. "Where is Jim?" she said. "I don't know," I said to Mrs. McCann.

Q. Did you tell Mrs. McCann on that morning that Mr. McCann had gone to Kentucky?

A. I did not. I told her I didn't know where he was.

Q. Did you tell Mrs. McCann on that morning that Jim had sent $10.00 to Tom Leonard?

A. No; I didn't say that he had sent it.

Q. Did you deliver to her any message whatever purporting to be a message to her from Jim McCann concerning Tom Leonard?

A. I don't follow you quite.

Q. Did you say anything to her about Tom Leonard at all?

A. Yes; I did.

Q. On that morning?

A. Yes, sir.

Q. What was it?

A. Something about a transaction that had occurred at the race track.

Q. Was it anything in reference to this matter—in reference to leaving the house?

A. Yes; I did.

1634 Q. What did you state?

A. I told her that it was Mr. McCann's intention that he should leave the house. I did tell her that, and she knows the reason why I said it.

Q. Did you give her $10.00 to give to Tom Leonard to leave the house?

A. I gave her $110.00 altogether.

Q. That morning?

A. No; the afternoon.

Q. Where did you get that $110.00?

A. I went down, as usual. I think it is on Walnut street, the place where I placed the bets for Mr. McCann. I went with Mrs. McCann and I drew, as I usually did, the same as I put in the money, and I am not sure whether it was 164 or 160. Witness says 160 and Mrs. McCann says 164. I think Mrs. McCann is right about that. I think it was $164.00. I wish to correct one thing that has been said about race tickets. There are no tickets given. It is simply an affair between a person who bets and the person who receives the bets. There is no ticket passes. Simply give your money in and the horse you are going to bet on and that is the end of it, and the next morning you get the Chicago Form, the result of the races, and it is made up from that Form and the difference between what you bet and your earnings or losses is made up there at the store and paid out without any ticket whatever, and I had frequently gone down there. It was Mr. McCann's wish I should do so.

Q. State whether or not you handled money for Jim McCann.

A. Oh, yes; frequently.

Q. To what extent?
A. Well, I couldn't exactly tell you that.
Q. Considerable sums?
A. Considerable sums, yes. I have gone down and put on different bets in checks, sometimes checks that Mrs. McCann signed
1635 and sometimes Jim signed. The latter part of the time he didn't sign any checks at all. He paid the money in, and next day I would go down and take the difference. Sometimes he would go and sometimes I. He asked Mr. Brockmeyer wouldn't I do. He delegated the authority to me to act in that matter and it was going on that way for a couple of weeks.
Q. When you got this $164 on the 19th, about what time was that?
A. Mrs. McCann came to me about 11 o'clock, and we had a talk about a half an hour, then went to lunch. After lunch we went down town, and at my request she came in and we got the money. I am not sure whether it was in the beating store—the tobacconist's—that I gave her the hundred dollars, or afterwards. It was that afternoon.
Q. $100.00?
A. $100.00 then.
Q. And where did you give her the other ten?
A. That I am not certain; at the house, I believe, later on.
Q. Had you seen Tom Leonard before this on that day of the 19th?
A. He was in bed when I got home; at least Morrison told me so.
Q. You never saw him?
A. I did not see him that morning; no.
Q. Now, what did you tell Mrs. McCann about the disappearance of Jim?
A. You mean on the morning of the 19th?
Q. Yes.
A. I told her that we went up to the Suburban Garden and we had our photographs taken there, and I gave her two or three of the copies; I don't remember. And I told her this story—that we got into trouble at the Suburban Garden, and I didn't know where Jim was, or when he would come home, but I did believe that he would be home shortly. That is true; I did tell her that.
1636 Q. State whether or not the Suburban Garden transaction had ever occurred.
A. Partly; in part.
Q. When?
A. I think it was on a Monday or Tuesday afternoon; I am not positive which of the two preceding days; but that wasn't a fight, it was——
Q. Now, in reference to the statement made at the Four Courts that the Suburban Garden matter wasn't correct, what did you state?
A. I don't quite follow you.
Q. What did you ever state to them at the Four Courts with reference to the Suburban Garden matter at the time of your second arrest?

A. I told them it was partly true. It was true in part, not wholly.

Q. Why did you tell Mrs. McCann this matter of the Suburban Garden and say it took place on the night of the disappearance?

A. I had very good reasons for that. Jim McCann was my friend, my benefactor, and I would do anything for the man, and I thought he got into some trouble with these men; that they were there to cheat him out of money. He had told me on several occasions never to tell Jessie what I saw while out with him, and I had no idea of a crime having been committed. I thought that Jim had probably got into a fight—had some trouble, and that he would turn up shortly, and, as I have said before, I didn't want Mrs. McCann to be worried about the matter at all.

Q. You thought that he would return in a few days?

A. I did.

Q. You were not put under oath or anything of that kind in reference to any of these statements that you made heretofore in reference to this case?

A. No.

Q. State whether or not you ever shot Jim McCann.

A. I never did. Such a thought never entered my brain—never would.

Q. State whether or not you ever planned or connived with anybody to shoot, kill, or in any manner injure Jim McCann?

A. Never.

1637 Q. Never?

A. Never thought of such a thing. Such a thing never entered my brain; especially as far as Jim McCann was concerned. We were the best of friends—had always been.

Q. Did you ever offer any physical injury of any kind to Jim McCann?

A. Never.

Q. State whether or not you ever knew of anybody planning or intending physical injury of any kind against Jim McCann, or Jim McCann's life?

A. No. I can say I had seen threatening letters which had been written to Jim McCann from Oscar Wells, of Hammond, Indiana, but I never heard anyone threaten him personally. I have seen these letters. Oh, I beg your pardon; there is one incident occurred to me; I think it was the Saturday preceding the disappearance; he went late one night to a saloon at the corner of—I think the southeast corner of Ewing and Easton avenues, not far from the house, and there were some detectives and police officers there, and Jim McCann was a little fresh, I admit; but he did nothing out of the way, but all of a sudden he was struck and knocked down. I spoke to the detectives about it. I said, "That man done no harm," and I got my hat knocked off and was struck at the same time; but that is the only occasion where I know of any person offering personal violence to Jim McCann. I think that was the Saturday night

preceding, about 12 or 1 o'clock in the night. He went to get a drink there and those gentlemen were rather fresh, and he talked a little tough to them.

Q. Why did you tell them down at the Four Courts the Suburban Garden matter with reference to the disappearance of Jim McCann?

A. I believed that Mr. McCann would come back again; I
1638 didn't think he had been murdered. I didn't think anything of that kind. I was under the impression that he had got cut up a little and that he was at some place on Chestnut street or Washington avenue, and frequently when coming home Jim had given strict orders to me not to tell Mrs. McCann anything of what I saw while we were out. Had I any idea that a crime was committed I surely would have told her. Assistant Chief Keeley told me down at the Four Courts, "You are trying to screen something, I can see it," but I did not admit it.

Q. When McCann did not turn up what interpretation did you make of it, if any?

A. I did not know what to think of it; I didn't understand it; or I don't understand it yet. I knew he went about pretty frequently in places where he ought not to go, and I thought he got into some trouble, and I wanted to screen him, and I tell you, gentlemen, now, if the same thing was to be had over again, under the same circumstances, I would screen Jim McCann.

Q. Did you ever try after you returned on the 19th? State whether or not you ever tried to get Mrs. McCann to send any money to Hammond, Indiana?

A. No; I strictly opposed it.

Q. State what that transaction was?

A. Some time on Friday there was a woman's voice came to me over the telephone, and she said "Jim's hand or wrist was hurt or sprained, and he couldn't write and wouldn't come to the 'phone," and she said, "send in a registered letter $300.00 to the post-office at Centralia or Sedalia." I believe it was Centralia. I says "Who are you?" "Never mind," she says; and I said "Well, I will have nothing to do with it, and I will advise Mrs. McCann to have nothing to do with it."

Q. Did you tell Mrs. McCann about it?

A. I told Mrs. McCann about it, and she has already testified
1639 at the coroner's inquest that I advised her not to send it. I said send a letter registered there, but send no money in it, and if Jim McCann is there, to receive that letter, he has to sign for it, and you will know his signature, and unless you get his signature don't send the money.

Q. How did she act about this?

A. She took my advise at the time, but finally she said: "If Jim wants money I will send it to him. If he wants the money he shall have it. If he is in any trouble I will give him any money he wants."

Q. Describe this transaction with Mitchell?

A. Mitchell was my friend, and Mrs. McCann, I saw, was grieving. I was sorry to see her, and I told Mitchell about it, and he says I guess we can fix this up, and he suggested to write this letter, as he has voluntarily stated, and I consented to it, for the simple reason I couldn't bear to see that woman fretting. I thought Mr. McCann would return home. I expected him to return home in a few days. That wouldn't have been the first scrape he had got into and returned.

Q. Have you stated anything in there about not sending the money?

A. Yes, sir; I thought some one was trying to swindle her and I said, "Don't send what I asked for," I believe it was. It is so long ago I have forgotten that. I believe that is the way I worded it—the way the words were—"Do not send what I asked for."

Q. Now, why did you go down to Brockmeyer's and get the money?

A. Those were my instructions—Mr. McCann's instructions.

Q. To get the money every day?

A. Every day, as usual.

Q. And Mrs. McCann went with you?

A. That day she did. That was the only time Mrs. McCann
1640 did go with me to draw money.

Q. Now, when you were at the Four Courts and undergoing the sweating process?

Mr. JOHNSTON. We object to that expression.

Q. Well, tell what happened at the Four Courts?

A. Well, I think we got down between 8 and 9 in the evening. I was hurried into Chief Desmond's office, and the rooms appeared to me then to be nearly full of people—some were coming and some were going, and I was questioned on all sides, but it seemed to me that nearly every one had something to say. Question after question was fired into me, and I was so contradicted that I didn't know what I was saying or what I was doing. I think I remained in there from 8 o'clock or 8.30 until after 1 o'clock in the morning, and was constantly being questioned all of that time. I may have been let alone for a few minutes, but then it began again.

Q. Do you know anything about Mrs. McCann's and Mr. McCann's domestic relations?

A. I do, but I don't want to mention them. I don't want to reflect on Mrs. McCann at all. Mrs. McCann is in the room now, I would rather not do it.

Q. State what happened between Mr. and Mrs. McCann in the nature of violence that you know of?

Mr. JOHNSTON. Tell it all.

A. I know several events, but I don't want to tell them.

Q. State what took place between Jim McCann and Jessie McCann that you know of?

A. Is that necessary, your Honor?

(COURT.) Your counsel is conducting your case and he
1641 asks you.

A. I think I may have been there three or four days when one afternoon a little boy, Theodore Ramsey, who has testified here, came to me; I was hanging up pictures in the front room; we had only re ently moved in, and Jim asked me to hang the pictures. He says, "Your taste is good; you had better hang the pictures." I did hang the pictures and Ramsey ran into me and he says, "Mr. Barrington"——

Mr. JOHNSTON. We object to what Ramsey said.

Q. (COURT.) State what you saw yourself without stating what he said.

A. I can't do that unless I relate the whole event that took place.

Q. (COURT.) Ramsey will have to tell what he saw, and you will have to tell what you saw.

A. I went out when Ramsey came in to me and Mr. McCann was beating, I am sorry to say, Mrs. McCann. That was the first occasion I saw anything of that kind. Then he locked her in the back room and went down town.

Q. On the same day?

A. The same afternoon.

Q. State what was the condition of Mrs. McCann's face after this took place.

A. The right-hand side was bruised and the eye was blackened. After a time I went into her, and she was crying, and unlocked the door. I suppose I went in three or four times. She was wearing a white blouse, and the blood was all over her blouse or waist, and I got some water to bathe it. The blood was all over the place. It was about four o'clock when she asked me to unlock the door and let her out, and I says if Jim comes and finds you out he may start it again, and she said, "I will take all the blame; let me out," and I let
1642 her out. Jim came home about six o'clock and he saw her out, but he made no remark to me about it whatever; but what he said to Mrs. McCann about it I don't remember.

Q. Did you see any other fights between them?

A. No fights.

Q. Did you ever hear any threats between them?

A. Many.

Q. What threats did you ever hear?

A. One night, I suppose several days after this first fight, I was awakened in the night—my room was right over theirs—I was on the second floor and they were on the first. I was awakened by Mrs. McCann and Mr. McCann quarreling; I put on my house robe and looked over the banisters, and I saw Mr. McCann pushing her right out of the room and banging the door. Mrs. McCann rushed half way upstairs while I was looking over the banister, and Mr. McCann opened the door and she says, "I hate you! I hate you." He says,

"I know that for some time. You have changed since we came from Chicago," and she went in the back room and brought out a bed coverlet or something, and whether she intended to lie down on it or not I don't know; she threw that under the stairs—threw that down there and Jim came out again and she went into the back—I can't say where she went; but Jim came in my room to offer an explanation of it, and it was in this back room he gave me this explanation. Mrs. McCann came up the back stairs and was listening to what Mr. McCann was saying. It was at this time, and it was the first time I ever heard it in my life, he says, "Jessie is not my wife. I am not married to her, and I intend that she shall go." I says, "I don't think that is right," or words to that effect to him, because at that time I had never known of Mrs. McCann to do anything dishonorable one way or the other.

1643 Q. Now, did you ever hear him threaten her any?

A. Yes; he said to her one time: "Jessie, you haven't a chance to live! You haven't a chance to live."

Q. Now, did you tell these darkies to hide those clothes that you took off when you returned on the 19th day of June?

A. The only thing that I said to the darkies at any time about clothing was when I told Morrison in the bathroom to take the clothes down and clean them and hang them on the line to dry. I don't remember seeing them only on one occasion since. I went out in the yard. I am not positive whether next day or not, but they were still hanging on the line, and from that time until I saw them a few days ago in the court room I had never seen those clothes. The vest is still missing, and the tie is still missing. The small ¾-carat diamond pin is still missing. Who has taken it I don't know. I have never seen it from that day to this.

Q. Could you tell the pantaloons you wore away on the 19th or the 18th?

A. The suit was blue.

Q. State how the pants corresponded with the coat.

A. It don't correspond with the coat.

Q. That you wore away?

A. They corresponded with the coat. The coat, vest, and pants were of the same material. I know the name of the material if I hear it, but I can't recall it to mind.

Q. Here are pants marked "Exhibit No. 1" on the back. Take these and look at them and say whether or not they are the pants you wore away that night?

A. They are not. They were a pair of pants I put out to take down to Albert Cady to be repaired and cleaned and lengthened. They are not the pants I wore that night. There is the pants I wore that night. There is a difference in the length of them and a
1644 difference in the width of them. Those are the pants that I had on at the time; this is the same material as this coat. It was bought at the same time.

Q. (COURT.) What is the number of the last pair?

A. Exhibit 3.

Q. This Exhibit 3 are the ones you wore that night?

A. Yes; the same material.

Q. Exhibit 3 is the longest, isn't it?

A. Yes; and they are wider. I will say they are both my pants, but this pair were lying in the wardrobe to be repaired, and I have never seen them since—since I saw them that day in the room.

Q. Now, where have these pants been?

A. I have had them with me.

Q. Here in jail ever since your trunk has been brought here?

A. Yes, sir. The only article of clothing I wore that night—where is that jacket?

Q. This coat?

A. Yes. The vest I have never seen since and the pants were brought back to my room, by whom I don't know. These pants were taken away. That is the pants I left out to be repaired and cleaned by Albert Coby, tailor, in the Jaccard Building.

Q. Is that the coat that you wore away that night?

A. Yes, sir.

Q. When you looked at that on the morning of the 19th, state whether or not you saw any blood on the back of it?

A. I didn't look at it particularly, but I am very sure there was no blood there.

Q. McCann had—what had he ever done for you in the line of giving you anything?

A. Well, the first time I ever saw Jim McCann was down at
1645 100 North Broadway. He came into the saloon one day and introduced himself to me. He done it in a cheerful kind of way and began speaking to me about my wife. I spoke to him in reply. I didn't know his name at the time, and I says, "I don't wish anyone to speak about my wife. I never talk about her. I respect her too much," and then he began to ask me about the divorce, whether it was true, and I told him a few facts about it and he says, "I am going to give you $50. A man who would be treated by a wife like you have been recently and not allow others to speak of her—I am going to give you $50." I thought he was joking, but he went down to the Southern Hotel and came back in an hour's time with a $50 gold certificate in his hand and says, "Here, Mr. Barrington, is $50 for you," and I took it and said to the bartender, "I will keep this till to-morrow, when he will want it again." He came to the bar next day, but didn't say one word about the $50. I can tell you the day it was. I have it in a little notebook here. It was some time in the month of April—Monday, the 27th of April. There it is.

Q. Did he ever give you any money besides that?

A. On two occasions he has.

Q. His treatment of you generally in other respects, how was it, liberal or otherwise?

A. Very liberal. No one could wish to meet a better man than Jim McCann. He got fresh at times, but he was very liberal and we were the best of friends.

Q. At the time that you went to Bonfils, on the 18th, did you have any property of his in your possession?

A. No; I never had any property, only what he delegated to me, the betting money, and that I attended to regularly.

Q. State how you felt towards him at all times.

A. I have never had but one feeling towards Jim McCann;
1646 that was the greatest of friendship.

Q. Sometime after the disappearance—what conclusion did you come to after his absence?

Mr. JOHNSTON. We object to that as calling for a conclusion.

Q. I will withdraw it. Did you ever have any talk about pension papers in the presence of these negroes.

A. Never; nor in the presence of Mrs. McCann, as has been testified to on this stand.

Q. That is all.

Cross-examination by Mr. JOHNSTON:

Q. What is your name?

A. Frederick Seymour Barrington.

Q. Do you know Mr. Gillespie?

A. I do.

Q. Do you remember coming up with him on the street car one time just before you went to work for him?

A. No; I can't remember that I came——

Q. The first time you ever met him?

A. The first time I ever met him was at the workhouse, if you wish to know.

Q. Do you remember coming up on the street car with him?

A. On the morning the mayor ex*h*on*o*rated me.

Q. Do you remember telling him that morning that your real name was Seymour?

A. My real name is Frederick Augustus Barrington Seymour.

Q. Why do you use Barrington?

A. It is one of my Christian names—the name I have always gone by when traveling in the United States.

Q. In England you go by what name?

A. Seymour.

1647 Q. And in America you go by Barrington?

A. When traveling I do.

Q. When you are not traveling?

A. When I am at home I go by my own name.

Q. Where is your home?

A. England.

Q. At what place?

A. I decline to answer that.

Q. On what ground?

A. On the ground that I don't wish to inform my family of this. The disgrace is enough for me without my family being brought into it. I am not involving my mother and sister in this affair.

Q. That answer isn't sufficient in law.

A. For family and private reasons are the only reasons I can give you, and they are the truthful ones.

Mr. GROVER. The witness can refuse to answer.

COURT. He has offered himself as a witness.

Mr. GROVER. Then we object to the question as irrelevant and immaterial.

A. I have already given a truthful answer to the question—simply private and family reasons.

Q. I ask you again where is your home in England?

A. I decline to answer.

Q. What is your gro'nd for refusing?

A. My ground is just what I have just stated.

COURT. The question is proper. The witness ought to answer.

A. I decline to answer any question that will involve my family for private and personal reasons.

Mr. JOHNSTON. The State insists upon the witness being compelled to answer. The court has ruled on it.

Q. (COURT.) Mr. Barrington, the ruling of the court is that the State is entitled to this. You offered yourself as a witness
1648 here, and the court should know and the jury should know what your residence is in order to properly weigh your testimony and pass upon your credibility as a witness. Do you still refuse to answer?

A. I don't think it is right. It will involve my family. Part of the year I live in Brighton and part in London when in England.

Q. Where is your home in England?

A. I have answered. Part of the year in Brighton and part in London when in England. Many years I have been in India, away from England.

Q. When were you last in England?

Mr. GROVER. We object to that as irrelevant.

A. 1902—the first month of 1902.

Q. Where were you living at that time in England?

Mr. GROVER. We object to that as irrelevant, immaterial, and not proper cross-examination.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

A. January, 1902, near Brighton.

Q. What place near Brighton?

Mr. GROVER. We object to that for the same reason.

COURT. Objection overruled.

A. I decline to answer that question. I am not involving my family in this matter at all. It has nothing to do with this. I decline

to answer any question that will involve my mother and sisters. It is a disgrace to be charged—I will bear the disgrace.

1649 Q. Do you decline to answer that question? Where were you born?

A. India.

Q. When did you first come to the United States?

A. I have been to the United States twelve times altogether.

Q. When was the last time you came to the United States?

A. January, 1902.

Mr. GROVER. We object to that as irrelevant, immaterial, and not proper cross-examination.

COURT. Objection overruled.

Q. What time?

A. January, 1902.

Q. And where did you land when you came here the last time?

A. Halifax, Nova Scotia.

Q. Were you in New York in that year?

Mr. GROVER. We object to that as irrelevant and immaterial and not proper cross-examination. Incompetent because he is a prisoner on the stand.

COURT. It goes to the credibility.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Q. I will ask you if in Brooklyn you were married under the name of Barton?

A. I never was. The only marriage I ever had in my life was with Wilhelmina Grace Cochrane in St. Louis.

Q. You were never married in Brooklyn?

A. No, sir.

Q. Do you know Lieutenant Roby?

A. I do not. Lieutenant Roby does not exist—never has.

Q. Did you ever go under the name of Burgoyne?

A. I never did. I never went under any name, except Frederick Seymour Barrington, or F. Augustus Seymour Barrington.

Q. What did you make this change for in traveling?

1650 A. For family reasons. It is my private reasons. They are my own names.

Q. What has been your business in the past year or two?

Mr. GROVER. We object to that as irrelevant and incompetent, and not the proper cross-examination.

COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

A. I was sent down January 31st, or the beginning of February, to the workhouse for marrying Grace Wilhelmina Cochrane; the mayor exhonorated me, and I went with a man named Mr. Gillespie to manage that saloon on Broadway. From there I made an arrangement with Mr. McCann to go to the Leland, and from the Leland I came to prison.

Q. What was your business the year before you went to the workhouse?

Mr. GROVER. We object. We have had a fight over Mrs. McCann in Chicago.

COURT. I permitted you to ask her about Chicago. I didn't permit either of you to go into matters except her general reputation.

Mr. GROVER. Then, your honor holds it is entirely a matter of impeachment?

COURT. Certainly. It has nothing to do with the case, except as to the credibility of the witness.

Mr. GROVER. We object to it as incompetent, irrelevant, and immaterial and not the proper cross-examination. We object to it as incompetent, because it is the prisoner on the stand.

1651 COURT. Objection overruled.

(To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

Mr. JOHNSTON. If he wants to avail himself of his constitutional privilege for fear of incriminating himself, that is a constitutional privilege.

Mr. GROVER. We object to that remark. We object to the State's making remarks of this kind.

COURT. You gentlemen don't refrain from making remarks either side. You should not do so.

Q. Answer the question.

A. Part of the time with my sister in Ottawa. Part of the time in New York, a little while in Philadelphia, then Washington, D. C. From Washington I came here; that was after the death of my youngest sister. My youngest sister died in Washington, October, 1902.

Q. The question was what was your occupation?

A. I had sufficient time of my own. I had recently left the army, where I had been 13 years.

Q. When were you discharged?

A. When I went to South Africa as war correspondent, in the month of October, 1899, when I left Bombay for Pt. Deborn, Colony of Natal. I arrived there in the month of November.

Q. What was your occupation when you came to St. Louis—before you married Miss Cochrane?

Mr. GROVER. We object for the same reason.

COURT. Objection overruled.

1652 (To which action and ruling of the court defendant, by counsel, then and there duly excepted, and at the time saved exception.)

A. Honest and honorable.

Q. We know that; what was it?

A. That involves other people, and that is the reason why I don't wish to answer it. I was making arrangements——

Q. The question was, What was it?—do you refuse to answer that question?

A. I will bring other people's names into it that I don't wish to bring into it, who hold honorable positions both in the United States and England.

Q. Was there anything dishonorable about it?

A. I don't want their names to get a reputation from this case. If you ask me that question when this case is settled I will tell you.

Q. Will you answer the question?

A. It is a notoriety I should bring on others by involving their names. I think other gentlemen in this court will understand that.

(COURT.) I rule the question as proper, but if he doesn't want to answer——

Mr. JOHNSTON. I ask for him to answer. Do you refuse?

A. I decline to answer that question. I have other people's names——

Q. Well, the question still stands to be propounded later. When was it you arrived in St. Louis?

A. I think it was the 27th of December, 1902.

Q. Where did you come here from?

A. Washington, D. C.

Q. How long were you engaged in making this arrangement for this business?

A. They were made before I came to St. Louis.

1653 Q. Who was the first man that you met when you came to St. Louis—to know?

A. That is a hard question for anyone to answer.

Mr. GROVER. We object to it.

COURT. Objection sustained.

Q. Did you have any relatives in St. Louis before you came here?

A. I did not.

Q. No friends that you knew?

Mr. GROVER. We object to that for the same reason.

COURT. Objection sustained.

Q. Now, you say when you left the McCann residence and went to the drug store Mr. McCann telephoned out there to Bonfils to say he was coming?

A. I didn't say to Bonfils. I don't know where he telephoned to; but he telephoned.

Q. What did he say when he telephoned?

A. I don't know. I didn't go in the drug store.

Q. How do you know he telephoned?

A. Because I saw him go to the telephone, and he told me.

Q. You couldn't hear the language that he used?

A. I didn't hear the language that he used.

Q. Now, did Mr. McCann, when he left to catch the car, look at his watch to see if he had time to catch it?

A. I don't remember that.

Q. Did he have his watch with him?
A. I don't remember it.
Q. You don't know whether he had his watch or not?
1654 A. I don't. I took no particular notice.
Q. Did he have his ring, or not?
A. I don't know; I took no particular notice. He simply asked me to go ask the conductor whether we could get the car at Wellston to Bonfils at nine o'clock. I asked, and the conductor said, "No, you can't; it is impossible." "Well," he says, "We will go out to the Suburban Garden; we are not going to hang around here."
Q. Do you remember, before you reached Wellston, of you asking a man on the car, not the conductor, but a man there, whether or not you would be in time to catch the 9 o'clock car or not?
A. Yes; I have already told the jury that. I don't know whether the conductor or who. I asked someone.
Q. Do you remember of him replying that you wouldn't be in time, and you saying, "We will catch the 9.30?"
A. No; I didn't know what time the cars went. I simply asked him and he told me voluntarily "You won't get the car until 10 o'clock."
Q. You remember the man saying you won't get the 9.30, you have to wait for the 10?
A. I remember him saying the next car is 10 o'clock.
Q. When you got to the Suburban Garden, who did you meet there?
A. I don't know how many.
Q. Five, ten, or a dozen?
A. First three; and then he went to the shooting gallery and got talking to twenty or thirty around there.
Q. All his friends?
A. I can't say that. They were not his enemies, as far as I know.
Q. You say you left there about five or ten minutes to ten?
1655 A. Five or ten minutes before ten, in time to catch the ten o'clock car.
Q. What time did you get to Wellston before you caught the car?
A. I think five or ten minutes.
Q. You say you got in the first seat?
A. Yes, sir; for only a few minutes, and then he got up and sat in the seat front of me.
Q. What kind of a hat did you have?
A. A fedora, the same as you have got there, only the band was different; that is all.
Q. Had you your hat on?
A. No; I had not.
Q. Where was it?
A. I put it on the seat.
Q. What kind of a coat were you wearing?

A. This coat that you see here.

Q. What kind of a hat did McCann have on?

A. A stiff hat—round hat, straw, with a raised ridge around the center. It was inflexible. You couldn't bend it any at all.

Q. Did McCann have his cane that night?

A. He did.

Q. Is that the cane he had?

A. That is the cane he had—the cane he gave to me.

Q. Now, you proceeded on to Bonfils?

A. We did.

Q. Was anyone else in the car when you reached Bonfils?

A. Not when we reached Bonfils, that I remember.

Q. What time did you get there?

A. I can't remember. The conductor and McCann said 10.35, but as I didn't look at my watch I can't say, myself.

Q. Dark night?

A. Very dark.

1656 Q. Raining that night?

A. No.

Q. Stars out?

A. I don't remember.

Q. Any clouds?

A. I didn't look particularly for them.

Q. Then, how do you know it was such a dark night?

A. Because I do.

Q. Why?

A. Because I know we could scarcely see any distance in front of us.

Q. You could scarcely see any distance in front of you?

A. Not any long distance.

Q. And how far did you walk after leaving the station before you met this buggy and horse?

A. Well, I should say it was about twenty or thirty yards from the large tree on the left-hand side.

Q. That is as you go down?

A. As you go down. If you give me the plat I will show you the place.

Q. The tree on the left-hand side?

A. Right-hand side.

Q. Twenty feet from that tree?

A. Nearer the station.

Q. And how far from the tree?

A. The tree was some little distance—I suppose about twenty yards or more. The other side of the buggy, as far as I remember.

Q. And the tree was sixty feet away?

A. It might have been; I can't say. If you show me the plat I will show you where the buggy stood and where I was. I didn't measure the distance.

Q. Now, you think then you were twenty yards away from the tree?

A. I don't think anything about it; I don't know.

Q. Didn't you just say so?

1657 A. I told you before it was only a short distance. It was in front of the tree, on the right-hand side of the tree, and the horse was on the left-hand side.

Q. How wide is the road?

A. I don't know. I never measured that distance; never before.

Q. How did you know that tree?

A. Didn't I go out the next Sunday?

Q. I understand. Because you went out the following Sunday you can recognize where this buggy was and where that tree stood?

A. I knew exactly where the tree was and I looked.

Q. Aren't there other trees around there?

A. One tree only.

Q. Did you go as far as that tree south that night?

A. I don't think I did. When I was struck I rushed off into the bushes, and they ran after me.

Q. Where?

A. On the right-hand side.

Q. Now, you rushed off into the bushes. Is this the tree?

A. Yes, sir.

Q. That is correctly represented?

A. Yes. The horse was standing about here, say. I was standing just at the back of the wheel here, and I rushed across there and Jim and the other man after me.

Q. You say you rushed across the walk from where you were standing?

A. Yes, sir.

Q. That is all right. You were standing at the back wheel of the buggy?

A. Yes, sir; by the side of the buggy wheel.

Q. And did you run right straight across the road?

A. I did.

Q. How did you, then, keep from falling into the quarry?

A. There is a bank there, and I suppose four or five yards of

1658 bushes there before you come to the quarry.

Q. Four or five yards. You were between the station and the tree and you rushed straight across?

A. I beg your pardon. This plat isn't quite correct. This part here should be round there, and between the road around here there is a length of bushes.

Q. Then this plat does not correctly represent the surroundings there?

A. This part here should be there. The higher part here should be round there; outside of that it correctly represents the place; and here, all along here, are bushes—little trees—and there is a kind of a little path that runs into this place, and it is where this path is that I ran, and it is just on the top of the bank that I was knocked insensible.

Q. Below the tree?

A. Just below the tree. On the other side of the tree.

Q. Now, what is the character of the ground up around the quarry and this lower place?

A. I have only been there that once, and that was that Sunday afternoon, where I stood to view the body.

Q. Where did you stand to view the body?

A. All around here. There is a road that runs around in there. Mr. Bellairs can tell you that better than I can.

Q. What kind of men were those?

A. One of them I seen several times before at the Planter's and several places. One I don't know. I had never been introduced to him.

Q. Did you ever hear this man's name that you met at the Planter's?

A. I can't say that I did.

Q. You recognized him?

A. I would if I saw him.

Q. You did that night?

A. I knew him by his voice.

Q. How often had you talked to him?

1659 A. I heard him talk several times to Jim.

Q. I understand it was dark that night?

A. It was very dark.

Q. And did you know where you were going that night?

A. Not until we got to Compton avenue.

Q. You never went there before?

A. On the preceding afternoon. Compton avenue was the first time he told me that night.

Q. You had never been at this particular place where you met these men before?

A. No.

Q. And you didn't know who you were to meet that night?

A. I did not.

Q. Hadn't the slightest idea?

A. No.

Q. When you reached this buggy who was the first to speak?

A. The larger man of the two—the man I had seen at the Planter's.

Q. What was it he said?

A. I couldn't tell you the exact words, but he was blaming Jim for not being out there.

Q. And you recognized that voice?

A. I would the world over; just as I would recognize yours six months hence if I heard it.

Q. What did the other man look like?

A. I didn't take much notice.

Q. They were both in the buggy when you met them?

A. No, sir; they were outside, and they said is that you Jim? He said yes.

Q. Were they out of the buggy when they called?
A. They were out of the buggy.
Q. Did they say anything about not having been up at the station?
A. Not so far as I can remember.
1660 Q. Which way were they facing?
A. West or southwest. The road runs diagonally there.
Q. How far was it from the car line?
A. I can't tell you the distance.
Q. Do you know how far it would be?
A. I do not.
Q. You said that McCann said when he got off at the station he was to meet some one there?
A. Yes; and was disappointed because he didn't meet them.
Q. Did these people know?
A. I knew what they were waiting for and what it was for when I heard a person speak and found out who it was. I knew that was the same party Jim had been speaking to me about the preceding afternoon.
Q. Did Jim McCann tell you on the way out that he had telephoned these men?
A. No; he said he was going in the drug store to telephone.
Q. Did he say anything about having telephoned to these people he was to meet? Did he tell you anything about having telephoned when he came out?
A. He told me he was going in to telephone.
Q. When did he first tell you that he had an appointment to meet them?
A. He had an appointment to meet them the preceding day on Wednesday afternoon, and he told me they were not there. I didn't go away from the depot except a little way down the line when that little boy came and brought me back.
Q. Where did McCann go then?
A. I saw no more of McCann while with the little boy. I was with the little boy all the time.
Q. And on this trip out to the Suburban Garden McCann didn't say or tell you where you were going or who you were going to
1661 meet?
A. No; not who we were to meet, but he told me where he was going.
Q. Now, you say you knew what he was going for?
A. I told you he told me the preceding day what the facts were. It was in reference to the racing business. The man wanted him to put up a certain amount for a racing scheme and he jollied them along, and another scheme was the World's Fair top company. They wanted him to put $2,000 into that, and I advised him not to do it, and he said he wouldn't.
Q. Was anything said in that conversation about meeting at Bonfils?

A. Which conversation?

Q. When you heard them try to get him to put some money in these schemes.

A. Nothing was said about the meeting at Bonfils.

Q. Where was this man?

A. He lived at the Planter's Hotel and telephoned several times at the Planter's.

Q. What was the first thing that attracted your suspicion that night?

Q. McCann went to light a cigar and he scratched the match on the wheel, I believe—I won't be positive whether on the wheel or the side, and at that instant I saw a man reach for his back pocket and draw a revolver and put it there [illustrating]. That aroused my suspicion and I called him aside and told him about it.

Q. Was that the time that they rushed at you, then?

A. No; it was after I called Jim to one side and refused to go in the carriage.

Q. Did they ask you to go in the carriage?

A. Yes, sir; both of them, and Jim asked me.

1662 Q. There were four of you then?

A. Three.

Q. There were two men and you and Jim?

A. Three besides myself—four altogether.

Q. Four of you going to ride in the buggy?

A. Yes; that would have done in that buggy, too.

Q. Well, you say you called Jim aside?

A. Yes, sir; and I told him what I saw. He told me he was a lodgeman or words to that effect, and told me to come on, it was all right, but I had seen it and I knew that there was something wrong and I refused to go any further, and because I refused this man rushed on me.

Q. And you screamed, you think?

A. I shouted out. I can't tell you the words I used. I shouted out for Jim, and Jim came to my assistance, as he would to any man's.

Q. Because you refused to go and cautioned him they rushed on you?

A. The first thing I knew I was struck in the nose.

Q. That was before any shot was fired?

A. No, it was not before the shot was fired.

Q. When did the shooting commence?

A. The same instant when I wouldn't go in the carriage; I suppose there was about thirty seconds between the firing of the shot and the blow.

Q. Did you see them when the shooting was done?

A. I couldn't see them. I saw Jim rushing on them.

Q. Were you knocked down when you were hit?

A. Not at that time. I rushed away over the other side of the road, to the point I have indicated to you.

Q. How far in the brush did you run?
1663 A. Just on the top of the bank.
Q. And who pursued you?
A. The two men with McCann after them.
Q. McCann after them?
A. Yes; McCann was after them.
Q. And I understand you didn't hear any more shooting?
A. I did not hear anything more until the following morning—that was the last I heard.
Q. So you were knocked down before hearing any other firing?
A. Yes, sir; and I remembered no more until the following morning—until I felt the rain on my face.
Q. When you were knocked down, did you see where McCann was?
A. I saw him with the men; he was pretty sharply after them.
Q. He was pretty sharply after them?
A. Yes; he was.
Q. What was he doing to them?
A. I can't tell you that. It was too dark. He was defending me.
Q. Well, he went away and left you lying there, did he?
A. He went away. I didn't know anything at all about it after that.
Q. How did you get a look at him while you were lying there in the bushes watching him defend you?
A. That was when I was struck; I shot for the bushes and they rushed after me and McCann after them.
Q. He was after them pretty sharply?
A. Yes; and that was the last time I saw him.
Q. Was he saying anything?
A. I don't remember anything that was said at that time.
Q. Did he make any outcry?
A. I don't remember that.
Q. How many times did you outcry?
A. I shouted two or three times. The words I used I can't
1664 remember.
Q. How long after the firing of this first pistol shot was it before you were knocked insensible?
A. As soon as I ruched up to the bank of the bushes they were on me.
Q. Which man did the shooting?
A. The larger man of the two.
Q. And did you see the flash of the revolver at the time?
A. No; I did not. I saw him put the revolver from his hip pocket into his front pocket. I didn't see which fired the shot, and I don't know whether the other man had a pistol or not.
Q. Did you see what kind of a pistol that was.
A. I did not.
Q. Did McCann have any pistol with him that night?
A. I can't say; I don't know.

Q. Now, where, with reference to where you were standing, was this big man standing that had the pistol?

A. At the side of the buggy.

Q. The same side you were on?

A. I don't quite follow you there.

Q. On the same side of the buggy you were on?

A. At the front of the buggy—on the right of it. I was at the back and a little ways away, and McCann stood between us, and he struck the match on the wheel—McCann was between me and the other man, and when he struck that light it was then I seen it. The man was standing a little to the right of the rig and McCann close to the wheel.

Q. At the time he struck the match was the time the big man put the pistol from one pocket to the other?

A. Yes, sir; got his hand on it.

Q. Tell all the conversation that occurred before the pistol was shot?

1665 A. I only heard about the reason why he didn't get there.

Q. Repeat that.

A. He asked the question why he didn't come out there, as arranged, at 9 o'clock—leave Wellston at 9 o'clock and get there at the appointed time. He said he had been there waiting an hour for him.

Q. What was McCann's reply?

A. It is not fit to repeat.

Q. Let us have it.

A. It was a curse. It is not fit for one to hear.

Q. Do you remember it?

A. I do remember it very well. It is not fit for the ladies to hear.

Q. (COURT.) You may answer.

A. He says, "You God damned sons-of-bitches, who do you think I am."

Q. Anything else he said?

A. Yes; do you want it?

Q. Yes.

A. He futhermore said—Oh, it is an awful thing, I don't want to tell it.

Q. Tell it.

A. I don't want to tell it.

MR. GROVER. If you remember what it was, tell it.

A. Shall I tell you gentlemen?

Q. Answer the question.

A. He says "If you think you are going to get the upper hand of me you will be in hell's fire before long." Those are the very words he used—"in hell's fire, if you think you are going to get the upper hand of me."

Q. Who said that; the big man or McCann?

A. McCann said that in reply.

Q. Then what was the reply, if any?

A. I didn't hear the reply.

1666 Q. Was there any?

A. I don't know; I couldn't say that.

Q. Then, what did you do—what took place right after this conversation?

A. What I have already related to you.

Q. Jim McCann lit a match to light his cigar?

A. Yes, sir.

Q. And then you saw a pistol?

A. Yes, sir; from the rear to the front pocket.

Q. Then you called McCann away?

A. Yes, sir.

Q. How far?

A. To the other side of the road, and he told me it was all imagination.

Q. McCann didn't see it?

A. He was facing the wheel of the wagon; they were standing there and I here, and he had his back to them when he struck the light.

Q. And you don't recollect any further conversation that took place between them?

A. I do not recollect any more.

Q. Did any more conversation take place there?

A. I do not recollect any more.

Q. How long was it after he pulled the gun out and put it in his front pocket before the shot was fired?

A. I couldn't tell you that exactly. It may have been a minute—a minute and a half or two minutes. I am not positive of that. The interval was simply this; they wanted to urge me to go in the carriage.

Q. Who did?

A. This man, the larger man of the two, and I refused to go.

Q. What was it they said when they asked you to go in the carriage?

A. I can't remember everything was said that night. You

1667 are asking me these different matters that no man could remember.

Q. Did they ask you to go?

A. They urged me to go, McCann saying it would be all right.

Q. McCann said it would be all right?

A. Yes, sir.

Q. Did he tell you where he was going?

A. He did not.

Q. Did you ask?

A. I did not. I never had a chance to ask. After I saw that pistol I knew there was something wrong.

Q. Was it before or after you saw the pistol that you were urged to go in the carriage?

A. After I spoke to McCann about the pistol.

Q. Is that a fact that it was after you spoke to McCann that they urged you to go in the buggy?

A. Afterwards.

Q. Didn't you just state that while you were telling McCann not to go that they rushed at you?

A. That is true.

Q. I thought they were urging you to get in afterwards?

A. I told you I saw McCann strike the match and saw the man move the pistol. I told Jim what I had seen and he told me it was imagination, and I told him it was no such thing, and that I was not going any further that night, and then he urged me to go in and the men urged, and it was because I wouldn't get in the carriage they rushed at me and struck me.

Q And that was the first mark of violence?

A. The first mark of violence was when they struck me in the nose.

Q. Then it was before the shooting, wasn't it?

A. I told you no. I told you two or three times the shot didn't hit me—touch me at all.

1668 Q. Which way were they shooting?

A. I don't know; it was too dark.

Q. Did you see the flash?

A. I did not. In fact my back was turned to one of them. I was too much stunned after the——

Q. To see the shot?

A. I didn't see the shot at all. At the same instant the men came at me the pistol was fired, and I shouted immediately afterwards.

Q. I understood you to say you were too much stunned to see the flash?

A. About the instant they rushed at me I heard the report of the pistol.

Q. And you were then struck?

A. I couldn't say exactly that moment, but there were not two minutes elapsed between the two. It was almost simultaneously.

Q. Were you in the road with McCann when you were struck?

A. Say this is the buggy here, this the hind wheel, and I was about here. It was almost in the center of the road.

Q. A couple of feet away from the buggy?

A. It may have been about three feet, I am not sure about that.

Q. Was the blow a hard one?

A. It was very hard.

Q. Did not knock you down?

A. Not then, it didn't.

Q. Was it the big man or the little man that hit you?

A. I wouldn't be sure; possibly it was the big man.

Q. The same man that did the shooting?

A. I don't know which did the shooting. I only know I saw the big man with the pistol.

Q. And after being struck this violent blow you rushed over across this road into the bushes?

1669 A. I ran into the bushes, with them running after me.

Q. Which one struck you there?

A. I couldn't tell that on a dark night.

Q. Did you notice how far McCann was behind them?

A. He was close on them.

Q. Now, in the morning what time was it you woke up?

A. I couldn't tell you that; it was just getting light. I could see plainly the objects around me, and it was raining.

Q. When you left home that evening how much money did you have?

A. $27.50, and 15 c. I found the following morning in this pocket I didn't know I had.

Q. You took the street car and went out to the Suburban Garden that evening?

A. Yes, sir.

Q. Did some shooting?

A. Yes, sir.

Q. And went riding around on the scenic railroad?

A. Yes, sir.

Q. Met a lot of friends?

A. Several of them.

Q. And you didn't spend a cent?

A. I did not. Mr. McCann had money, and he wouldn't allow it if I had the money.

Q. You gave him the $27.50?

A. He asked me what money I had, and I pulled it out and counted it, and he said, "Well, give it to me, and you shall have it back to-morrow." That was not the first time McCann had said that to me, and not the first time that he gave it back.

Q. On the way back how did you start—when you started back to St. Louis?

A. I started to walk. In the first instance, I went around to see if I could see anything, or signs of anything, and I could see noth-

1670 ing, and I started to walk back. It was still raining at that time, and the rain ceased when I had been walking probably ten minutes or a quarter of an hour. I went straight up to the road and returned on the road—on the track, and walked on the track the greater part of the way back.

Q. Now, did you stay on the track all the way in?

A. Not all the way. When the cars came along I had to step off of the track to get out of the way.

Q. Where did you meet the first car?

A. I couldn't tell you that.

Q. How long after you had been on the track?

A. I couldn't tell you that. I have no remembrance of that.

Mr. GROVER. We object.

COURT. Did you examine him as to that?

Mr. GROVER. No.

COURT. Confine yourself strictly to cross-examination.

Q. When you got to the Leland Hotel on the morning of the 19th, what time was it?

A. I believe it was 8.30, as near as possible. I know just before I got into Wellston it was rather warm, and I had my vest this way, my hand knocked against my pocket and I felt something hard, and at that time I was very thirsty and I went into a place just before I got into Wellston and got a bottle of ginger ale, and as I got into Wellston the car was on Easton avenue, and I jumped over and got on and went into Ewing and Easton.

Q. Which hand was it that struck on your vest pocket?

A. Left hand.

Q. Your left hand struck against your pocket?

A. I felt casually, like that, and felt some money, and I didn't know I had that, or else I should have ridden the whole way through. Had I known I had the 15 c. in my pocket I wouldn't
1671 walk that distance.

Q. Was that the hand was swollen?

A. Both hands were swollen.

Q. Could you use that hand?

A. To a certain extent, I could.

Q. Now, when you got on the car, what door did you go into the Leland Hotel when you got there?

A. The Ewing avenue door.

Q. Did you know Theodore Ramsey?

A. I do.

Q. Did you see him that morning?

A. I did not.

Q. What door did you go in? Was it the up or downstairs door?

A. When I first went into the yard I went down to the lower door. It was locked and I came up the steps and went up to the top door, where there is a screen door. The screen door was open and I went in that screen door on the first floor.

Q. Who opened the door for you?

A. No one at all; the door was open. I believe the iceman had been there a short time before, but I am not sure about that.

Q. Who was the first man you saw at the Leland?

A. Charley Morrison.

Q. Where was he?

A. I went downstairs to him and told him to come up to the bath room and take my clothes.

Q. That was all you said to him?

A. That was all I said to him at that time.

Q. Did you tell him anything about why your clothes were in the condition they were?

A. I don't think I said anything to him about that. I don't think I did.

1672 Q. Did you say anything to him about being at the Suburban Garden with McCann?

A. I am sure I didn't.

Q. Did you tell him how this was?

A. I should not think of doing it with darkies.

Q. Where was your revolver at that time?

A. It had been in the trunk all along.

Q. And when Morrison was in your room it wasn't in the bed?

A. No. He never saw that revolver until at the Four Courts.

Q. You didn't take up the revolver off of the bed and put it in the trunk?

A. No, sir; it was in the trunk wrapped up in tissue paper just as it was given to me.

Q. Did you recognize that revolver that was shown to you?

A. That is the revolver.

Q. When you got there that morning, you say, I believe, in your direct examination, that you were told by the servant that Leonard was in bed?

A. I asked him.

Q. Why?

A. Because I saw no one around the house. I says, "Where is Mrs. McCann?" And he says, "She has gone down to her office a short time before." "Where is Leonard?" I asked, and he said, "Up in bed." "It is rather late for him to be in bed," I said, and he says, "Yes;" and that is all I said, like anybody else belonging to a residence and coming home, he would say where is my wife or daughter or son in a casual way.

Q. When you called him up to the bed room had you changed your clothes?

A. I called him up to help me take them off. My hand was so swollen I couldn't get them off.

1673 Q. Did you tell him about the lye?

A. I should not think of telling a servant to get lye. That is purely fabrication. I told him to take them down and clean them. He told me there were some blood spots on them that evening and I said I know it, and he asked me how that got on, and I told him it was no business of his.

Q. You never told him about the Suburban Garden?

A. I never mentioned it to him. The only person I mentioned about the Suburban Garden to was Mrs. McCann.

Q. Where was it you got that cane from?

A. Mr. McCann gave it to me on the Monday preceding.

Q. You say that is the case McCann carried that night?

A. Yes, sir.

Q. Where were you when he gave it to you that night?

A. He didn't give it to me that night.

Q. Then, how did you get it in the trunk?

A. You are under a wrong impression about that cane. On the Monday preceding we were out at the Suburban Garden.

Q. How did you get it in your possession that night?

A. McCann had been using a cane daily. I seldom carry a cane. I generally carry an umbrella.

Q. And did you get it that night?

A. That same night.

Q. Where?

A. Just as we got off the car. McCann preceded me across that little path, and he says "Here, Fred, take your cane." He had been using it constantly, and I took the cane from him, and when I was coming home I found the cane next morning in the road, and when I came home I told Mrs. McCann "I have Jim's cane," the cane Jim gave me, and Mrs. McCann knew I had the cane all the time.

Q. McCann used the cane in the street car, and when he got off in the dark he told you to take it?

1674 A. He gave me that cane over at that time.

Q. And during your plight in the bushes did you still hold to the cane?

A. No; I dropped it when I received the first blow.

Q. How did you drop it?

A. As I stated.

Q. When you got up in the morning did you hunt for your cane?

A. I didn't hunt for anything particularly.

Q. On your way back were you carrying that cane exposed, or was it under your coat?

A. No; it was not.

Q. You will swear you carried that cane exposed?

A. I will swear I was carrying it the whole way home.

Q. And when you met the street car?

A. I had it in my hand exposed.

Q. And when you got the Leland Hotel had you still that cane?

A. I had it in my hand and I took it to my room that same day and it was in my room until the day I left.

Q. Mr. Barrington, what was the first thing you done or said as you walked down Taussing avenue the night you got off at Bonfils?

Mr. GROVER. I think there should be some limit to this. He has answered that question several times.

COURT. He has been asked in regard to that.

A. McCann and I were talking together.

Q. Otherwise you heard nothing much until you came in sight of the men?

A. And then I heard the men ask Jim why it was that he was not out an hour earlier.

Q. What about the whistle?

A. I understood that you meant the speech—the voice.

Q. Didn't you say that you heard a low whistle?

A. I did, but I thought you meant in reference to the speaking.

1675 Q. I believe you said you knew Asa Mitchell?

A. I knew Asa Mitchell.

Q. When was it you went to see him after the 18th of June?

A. I don't remember that. It may have been Monday or Tuesday; I am not sure about the date. It was at least three or four days afterwards.

Q. At whose dictation was that letter written?

A. He suggested that he would write the letter, and he read it over to me and I concurred in what he said. Some of the words were mine and some were his.

Q. Are the words underscored in red ink a copy of that letter?

Mr. GROVER. We object.

COURT. Objection sustained.

Q. The letter was written by Mr. Mitchell?

A. Yes; it was written by Mr. Mitchell.

Q. Do you know what was done with it after it was written?

A. Yes; I took it away myself.

Q. Who was it addressed to?

Mr. GROVER. We object.

COURT. Objection sustained.

Q. Where did you take it to?

Mr. GROVER. We object.

COURT. Objection sustained.

Q. Did you ever say anything to Mr. McCann or Mrs. McCann about having a pension?

Mr. GROVER. We object.

COURT. Objection sustained.

Mr. GROVER. If he wants to speak of any time that Mr. and Mrs. McCann were both present, I am willing to have him answer.

1676 Q. Do you remember any time within a week before the 18th of June, at the Leland Hotel, in speaking to Mr. McCann in Mrs. McCann's presence, saying anything about a pension?

A. I understood the former question referred to the two colored servants. I have never at any time mentioned anything about the pension to Mrs. McCann; I have to Mr. McCann.

Q. Where was it?

A. I can't exactly tell you where it was, nor the time.

Mr. GROVER. We object to that.

Q. Mr. Barrington, where were you on the 17th of June?

A. In the morning I was at the house; went down town to the betting store where we bet, and in the afternoon we went out to Bonfils. That was on Wednesday, the 17th.

Q. What time?

A. Half past two or three o'clock in the afternoon. I am not sure of the time.

Q. Was that the time that you started?

A. I am not sure; sometime in the afternoon.

Q. You started sometime in the afternoon?

A. Yes, sir; early in the afternoon, perhaps between two and three.

Q. Between two and three?

A. As near as I remember; I can't say exactly.

Q. Did Mr. McCann say anything to you about the purpose of your visit to Bonfils upon that occasion?

A. Not on that occasion he did not.

Q. Did you know where you were going upon that occasion?

A. I did not. It was the first time I was out at Bonfils.

Q. How long did you remain there at Bonfils?

A. As near as I can remember, it may have been a half an hour or three quarters. I am not sure about the time. I was talking to that little boy most of the time at the station. It may have been an
1677 hour, I can't say. I waited until Jim McCann came back and we both returned to the city.

Q. When you left the car which way did you go?

A. We went over the bridge, and he went up the road and I down the track, and the little boy came after me and told me there were danger signals there.

Q. You say he went up over the bridge; which direction was he walking?

A. North.

Q. Then he went in a directly opposite direction to you?

A. He did. That is a thing I don't understand.

Q. What was said when you separated?

A. He said, "Wait here, Fred; I am not gong very far and will be back here very shortly."

Q. That is an open country?

A. I was never further than that bridge.

Q. You could see over that whole country from where you left him?

A. No; I couldn't see. I saw the road going up, and that is all I remember.

Q. There is no house there?

A. You are asking me things I don't know.

Q. No woods?

A. I don't know.

Q. Was there anybody there except McCann?

A. I saw a number of people going to see the flood.

Q. When McCann turned to leave you, did you see anyone he was going to meet?

A. No; he went alone.

Q. Did you see any rigs?

A. I did not.

Q. How long were you gone?

A. About a half an hour.

Q. Did you see him when he came back?

A. Yes, sir.

Q. So you didn't see the parties?
1678 A. He told me he did not.
Q. Did he say where he had been?
A. Nothing whatever.
Q. What time did you get home that evening?
A. That I can't tell you; it was before six o'clock.
Q. On the night of the 18th you say that you left with McCann, saying that you were going over to the drug store to get some headache powders?
A. McCann said that.
Q. McCann said you would go over and get some headache powders?
A. No; go in and get them?
Q. Did you go in and get them?
A. I did not. McCann did.
Q. Did you go back to the house then?
A. No, sir; he went across the road to that saloon; and he got a bottle, I think, of Budweiser; I am not sure; but I had a bottle of soda water.
Q. Why didn't you go back after going for these headache powders?
A. Simply because he went out to the Suburban Garden after telephoning.
Q. You went to the drug store first?
A. Yes, sir; and I stayed outside.
Q. And he went inside and got that headache powders?
A. Yes, sir.
Q. How long were you in there?
A. That I can't tell you; maybe five or maybe ten minutes. He went to the office.
Q. And you say after he came out you went across the street to the saloon?
A. Yes, sir.
Q. Then, you went west?
A. West on the cars.
Q. Did he say anything to you about changing his course?
1679 Yes, sir.
Q. What was it?
A. He simply said he was going out to Wellston to take the car there at 9 o'clock.
Q. Did he say anything about having telephoned any people about that?
A. He did.
Q. What did he say about that?
A. Simply that he had telephoned these people.
Q. That is the reason that he went to Wellston?
A. That is the reason he went.

Q. The reason that he went to Wellston and Bonfils is because he telephoned?

A. Because he made the arrangement.

Q. That was all that was done, and all the place that you went after you left the house?

A. From the drug store to the Suburban Garden.

Q. I mean until you went to the Suburban Garden?

A. Yes, sir; until we got off the car.

Q. You went to the drug store first and then to the saloon and then the cars to the Suburban Garden?

A. That is true.

Q. And from the Suburban Garden you took the car back to Wellston?

A. Yes, sir.

Q. Then took the car through to Bonfils?

A. That is true.

Q. And at the time you telephoned what time was it?

A. I can't say that exactly. I judge it was about half past seven by the time we left the house, as near as I can remember. I know it was just in the gloaming.

Q. Half past seven when he left and ten or fifteen minutes before he telephoned?

A. No; it was only three or four short blocks. It wouldn't take ten minutes to get up there. I don't think it would take
1680 ten minutes to get up there.

Q. This money that you collected at Brockmueller's, you say there is no ticket for it; isn't there a duplicate slip to the entry put down that you have as a memoranda?

A. No, sir; I would take a sheet of paper and go over the Chicago form in the morning. Mr. McCann picked out the horses and I took that into the store and gave it at the store.

Q. Hadn't you a duplicate?

A. I kept a record to show what I bet on, but there is no ticket passes between the man who takes the bet and the person who gives them in.

Q. Who told you to go and collect this money?

A. By Mr. McCann's authority.

Q. When was it he told you that?

A. General authority every day.

Q. When was it you bet this money?

A. The preceding day. I should have had $55 more than I drew out. There were $55 short from the day before, and he stopped that. My recollection, if it serves me right, is that I drew out $164. Mr. Brockmueller's man says $162, and out of that I gave Mrs. McCann $110.00. I paid several bills at the house—the living expenses—gave the servants their wages, paid the gardener, and paid Morrison. Mrs. McCann gave me $7.00, and I should have received $8.50. Mrs. McCann said she would give me the other afterwards. I gave her an itemized list of the things I expended during the week.

Q. Why didn't you give her all of this money?
A. I never did on any ocasion. She didn't mix with the betting.
Q. She asked you for it all?
A. She told me she loaned Jim $200 that morning, and she considered that was her money, but I had no authority from Jim
1681 McCann to give it to her.
Q. Did he say anything about refunding the $27.00?
A. I took that out of the money. Jim told me to. I only loaned it to McCann for the night.
Q. Was anything said about paying you a suit of clothes for the ones that were spoiled?
A. Mr. McCann had promised me a suit of clothes and he would have given it to me had he been there. But I want you to understand this: McCann owes me $40 yet. I paid out $75.00 that day.
Q. I asked you if you said anything to her about he having said that you should have money to buy a suit of clothes?
Mr. GROVER. We object to that as not cross-examination.
COURT. Objection sustained.
Q. What was the name of that saloon that you say you were working in, of Gillespie's?
A. Mr. Gillespie put a sign up of Lord Barrington and I remonstrated against it. I had nothing whatever to do with that, and that was one of the reasons why I left the place. He had no right to put it there.
Q. What was your occupation there?
A. I was managing that saloon for Mr. Gillespie.
Q. What were your duties?
Mr. GROVER. We object.
COURT. Objection sustained.
A. The same as any other manager's duties.
Q. You say that the trousers that Mr. Grover showed you?
A. They were the ones I wore that day and that night. I never changed them that day. I put them on on the morning of the 18th and didn't take them off until the morning of the 19th.
1682 Q. On the morning of the 19th you took them off?
A. Yes, and they were wet through when I took them off.
Q. What did they have on them besides water?
A. A few spots below the knee, and I washed those spots out in this jail——
Q. What did you do with those pants?
A. Those pants were taken down and those others were put in their place.
Q. Who were they taken down by?
A. That is what I am trying to find out.
Q. Didn't you give them to Charley Morrison?
A. I did, but he took the wrong pants down.
Q. Where were those pants he took down there?
A. They were put out to be repaired.
Q. Were they dirty?

A. Not exactly dirty. They were going down to be cleaned, pressed, and repaired.

Q. Were the pants with the coat you had?

A. I don't think they were. I took my coat off and threw it outside and Charley Morrison took the others out of the bathroom. I just threw them on the floor.

Q. And the pants that he took, did they have any mud on them?

A. Well, I wouldn't be sure about that. I can't say that just now. I wouldn't be positive about that.

Q. The pants that were to be sent out to be repaired at the tailors, did they have mud or dirt or blood on them?

A. No blood. They may have had some dirt or mud on the extremities.

Q. There wasn't anything to be cleaned about those at all, was there?

A. There was.

Q. And the pair that you did take off that morning were full of dirt?

A. They were down at the bottoms.

1683 Q. How high up?

A. I should say up to here. The grass was rather long and the rain had settled on it.

Q. You say the grass was long on the track you walked on?

A. By the side of the track and sometimes in the center it was.

Q. Did you indicate to Charley where the clothes were that you wanted him to clean?

A. He saw them in the bathroom.

Q. Then he saw the clothes that you wanted cleaned in the bathroom?

A. I threw the jacket off and outside on the rail and the others he got in the bath.

Q. And how did he get the pants mixed with the pair you say he took?

A. That is what I want to know, as I said before? I have never worn that pants that you have any except with that jacket.

Q. These trousers that you say you wanted cleaned and he made a mistake on, did they ever leave your presence that you know of?

A. Which pair?

Q. The ones that you said you wanted cleaned and Charley didn't clean.

A. I don't know. Those pants were brought back to my room.

Q. What clothes did Charley take out of the bathroom that morning?

A. The clothes that I took off.

Q. Then, did he take this pair?

A. He must have.

Q. Then, how could you wash the blood out of them in this jail?

A. He took the wrong pair of pants.

Q. You say he took the wrong pair of pants—didn't you just say that he took the clothes away that you took off that morning?

A. He did.

1684 Q. And didn't you say he took the wrong pair away?

A. Brought the wrong pair back is what I meant to say. You see I took the wrong pair.

Q. When did you again see these pair of pants you took away?

A. I can't tell; within a few days.

Q. Isn't that the pair that you saw out on the line?

A. Which pair?

Q. The pair you took off and you saw he took away.

A. I can't tell you.

Q. You don't know which way it was?

A. No; but I do know this same pair of pants that I wore that night I have been wearing here.

Q. That is all.

Q. (JUROR.) I don't understand the question as to whether McCann had promised him this suit of clothes before he was knocked unconscious or afterwards?

A. It was on the Monday preceding at the Suburban Garden—preceding the Thursday when he disappeared? He often did things like that—gave things away.

Q. That will do.

Redirect examination by Mr. GROVER:

Q. Mr. Barrington, what hat did you wear back to town on the morning of the 19th?

A. Straw hat.

Q. Was it Mr. McCann's hat or the one he had worn on the 18th?

A. I have never seen Mr. McCann's hat from the time he went out there. His hat was a round, stiff Panama—inflexible—you couldn't move it; and the one I wore back was a flexible one—you could bend it any way.

Q. Where did you get that hat?

A. They took my hat away, and I found that in its place?

1685 Q. And it wasn't Mr. McCann's hat?

A. Mr. McCann never wore that hat. I couldn't wear Mr. McCann's hats, they were too big for me.

Recross-examination by Mr. JOHNSTON:

Q. You say going out in the car you left your hat in the seat?

A. Yes, sir. It was some*time* similar to this one.

Q. It was a black Stetson?

A. Something similar to that one Mr. Jones is wearing.

Q. You say you wore that straw back?

A. Yes, sir.

Q. How did that happen?

A. I suppose in the struggle they took mine away.

Q. This gentleman that you say you recognized his voice, and you met him in the Planter's Hotel, did he favor Mr. McCann any whatever?

A. No, sir. He was trying to.

Q. I mean resemble him—did he favor him?

A. I think he was a little larger than Mr. McCann, and that is why I looked so closely at that body.

Q. In his general appearance—his features?

A. I think he was rather more of a blonde than Mr. McCann, and he didn't have so heavy a mustache as Mr. McCann had. He had a very short one. It was not a light one, but it was rather short and stubby; but as to the clothes both men had either Panama or straw hats; it was in a summer month—in the month of June.

Q. That is all.

* * * * * * *

1718 The defendant being convicted the following proceedings were had, to wit:

On March 10th, 1904, defendant filed its motion for a new trial, which was and is in words and figures as follows, to wit:

Motion for new trial.

1719 In the Circuit Court of St. Louis County, in the State of Missouri.

STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Now comes defendant, Frederick Seymour Barrington, in his own proper person, and moves the court to set aside the verdict in this case and grant defendant a new trial for the following reasons:

I.

Because the court erred in overruling the defendant's motion to quash the indictment, and because the finding of the court on said motion was contrary to the evidence produced on the hearing of said motion.

II.

Because on the hearing of said motion to quash the court erred in refusing to compel the State to produce subpoenas of witnesses who had testified before the grand jury when the grand jury was investigating the case.

III.

Because on the hearing of said motion to quash the court erred in excluding proper, competent, and legal testimony offered by defendant in support of said motion.

IV.

Because the finding, judgment, and decision of the court against defendant on defendant's plea in abatement, except the finding that defendant is a British subject, are contrary to law, contrary to the evidence, and contrary to the weight of evidence produced on hearing of said plea in abatement.

1720

V.

Because on the hearing of said plea in abatement the court erred in refusing to compel the production of the subpoenas of witnesses who had testified before the grand jury when the grand jury was investigating the case.

VI.

Because on the trial and hearing of said plea in abatement the court erred in excluding proper, competent, and legal testimony offered by defendant in support of said plea.

VII.

Because the issues made up on said plea in abatement were not tried by jury.

VIII.

Because the court erred in refusing to cite William Garen; Oscar Messing, alias Oscar Dane; the St. Louis Theatre Co., a corporation; and Victory Bateman for contempt of court for producing the play known as the "The Desperate Lord Barrington," thereby allowing the minds of the people of St. Louis County and of the entire State to be prejudiced against defendant as a direct result of said plays being acted, so that defendant on account of the acting of said play, could not get a fair trial.

IX.

Because the court erred in denying defendants second application for a citation of contempt against said parties, thereby allowing the minds of the inhabitants of St. Louis County and the entire State of Missouri to be so prejudiced against defendant, by the acting of said play, and the refusal to punish said parties, as to render it impossible for defendant to get a fair trial.

1721

X.

Because the court erred in overruling defendant's application for a change of venue.

XI.

Because the court erroneously made the order for the special venire of jurors at a time when neither the defendant nor his attorneys were present in court.

XII.

Because the court erred in overruling defendant's motion to quash the special venire of jurors.

XIII.

Because the court erred in overruling defendant's challenge to the array of special jurors summoned, out of which were to be selected the jurors to try the case.

XIV.

Because the court erred in allowing the State to make eight peremptory challenges of the panel of forty jurors, chosen for the purpose of selecting the twelve.

XV.

Because the court erred in admitting illegal, incompetent, irrelevant, and immaterial testimony and evidence on the part of the State and objected to on the part of the defendant, and excepted to at the time.

XVI.

Because the court erred in excluding competent and legal testimony and evidence offered by the defendant, at the trial to which exclusion defendant duly excepted.

XVII.

Because the court erred in overruling defendant's demurrer to the evidence.

1722 XVIII.

Because the court erred in refusing to give instructions No. 1 and 2 of those requested by defendant.

XIX.

Because the court misdirected the jury in material matters of law in giving instructions Nos. 1, 2, 3, 4, 6, 7, 8, 12, 14, 15, and 16 of those given by the court, all of which enumerated instructions defendant says are erroneous.

XX.

Because the court erred in submitting to the jury the issue of murder in the 1st degree.

XXI.

Because of the misconduct of prosecuting attorney in examining witnesses and having the witness seek to identify property before the jury, under the statement that he intended to show by other witnesses that said property was relevant and material in the case, and then failing to prove the property to be relevant or material or otherwise competent, which property consisted of 1 pair of trousers, 1 hat, and 1 part of a shirt.

XXII.

Because of misconduct during the argument to the jury on the part of Roland L. Johnston, prosecuting attorney, consisting of turning from the jury and approaching defendant and of making improper remarks, among which are the following: "This man Barrington. Who is he? A wolf in sheep's clothing. A monster garbed as a saint," to which remarks defendant at the time objected and excepted. Also the following remark of said R. L. Johnston concerning defendant and McCann: "When they arrived at the quarry this man Barrington, with razor in one hand and pistol in the other, ap-
1723 proaches his unsuspecting friend and benefactor, and in a short minute completes the deed which for weeks he had planned and premeditated."

XXIII.

Because of improper conduct consisting of the following: That Jessie McCann, one of the chief witnesses in this case, and who claims to have been the wife of James P. McCann on June 18th, 1903, attended the court during the argument of Assistant Prosecuting Attorney Gardner to the jury in said cause, and the said Jessie McCann became seated in the sheriff's chair in said court and sat at the sheriff's desk in said court, in a prominent and conspicuous place before the jury during said argument, and that during said argument the said Gardner gave a description of how he conceived that defendant had murdered McCann, whereupon said Jessie McCann proceeded to show great feeling and to cry aloud, so as to disturb the proceedings of said court and persisted in remaining in said chair and court, and thereafter cried and sobbed aloud until the court, upon protest of defendant through his counsel, ordered said Jessie McCann taken from the room.

XXIV.

Because of improper conduct and remarks of Mr. Gardner, assistant prosecuting attorney, during his argument to the jury, and consisting of the following: That said Gardner turned from the

jury toward defendant and in loud and scathing tones said: "There is the man who foully murdered his best friend, Jim McCann! Look at him! He has the reptilian sagacity of the devil and the heart of a monster. If I were to picture the devil incarnate to you, I would not describe him with a cloven hoof and a forked tail, but as being clothed in broadcloth and immaculate linen, with the cold and steely eye of this man Barrington, the guilty!" To
1724 which remarks and conduct defendant then and there objected and excepted, and also of the following conduct of the said Gardner in his argument to the jury; That said Gardner turned from the jury and walked over to the counsel table at which defendant was sitting, and the said Gardner, pointing his finger at defendant and while violently shaking his hand and said finger within one foot of the defendant's face, exclaimed concerning the defendant: "He has the gray eye of a devil and the heart of a monster." To which misconduct defendant duly objected and excepted. And the said Gardner further in his argument said of and concerning defendant: "Look at him, and tell me, gentlemen of the jury, whether such a monster is to be allowed to live in a community with peace-loving citizens."

XXV.

Because of admission in evidence over defendant's objection and exception the following articles, said to belong to the estate of McCann: 1 gold watch, 1 piece of watch chain and charm, 1 gold ring with 6 diamond sets, 1 pair of shoes, 3 collar buttons, 1 coat, 1 pair of pantaloons, 1 pair of drawers, 1 undershirt, 1 sock.

XXVI.

Because of admission over defendant's objection and exception as secondary evidence of a note or letter claimed to have been dictated and sent by defendant to himself on June 23rd, 1903, wherein some light purported to be thrown upon the disappearance of McCann.

XXVII.

Because the verdict is contrary to the evidence and the weight of evidence and is not supported by the evidence.

XXVIII.

1725 Because the verdict is contrary to law and contrary to the instructions given.

XXIX.

Because the verdict is the result of bias, prejudice, and passion on the part of the jurors.

XXX.

Because of improper conduct on the part of jurors, consisting of the following: One of said jurors, while the case was in trial and before it was submitted to them, conversed with some person whose name is unknown to defendant, and said conversation took place from the second-story window of the court-house, and took place without the knowledge or consent of the defendant or the court. Also, one of said jurors stated on his oath that he had not formed or expressed an opinion as to defendant's guilt or innocence, and that said juror in fact had stated that he hoped that he would be selected on said jury so that he could help hang defendant. That another of said jurors stated before he was selected as a juror, but after he had been summoned, that he would throw in a quarter toward buying a rope with which to hang the defendant.

That neither defendant nor his counsel knew of any such misconduct of jurors as hereinabove set forth until after the trial was over; that the names of said jurors are unknown to deft.

Wherefore defendant asks a new trial.

SHELLEY GROVER,
WILFRED JONES,
Attys. for Deft.

FREDERICK SEYMOUR BARRINGTON, *Deft.*

Said motion is endorsed: "Filed March 10th, 1904. F. J. Hollocher, clk."

1726 An affidavit in support of said motion for new trial was filed, in words and figures as follows:

Affidavit in support of mo. for new trial.

STATE OF MISSOURI, *County of St. Louis, ss:*

John R. Bennett, being duly sworn, upon his oath says, that he resides in Clayton, Missouri, and has for the last nine months. That he is eighteen years of age. That he attended the trial of Frederick Seymour Barrington for murder, which took place in the circuit court at Clayton. That during said trial he saw the jurors in the jury box and also saw them when they retired to the jury room, as he could see them from the court-house yard. That on Tuesday, March 1st, 1904, and during said trial and while evidence was still in the course of production before the court, that he was present in the court room at about 11 or 11.25 o'clock a. m., when the court adjourned on account of a convention that was being held in the probate court room. That upon such adjournment, the jury retired in the large room on the second floor of the court-house in the north end of said court-house.

That after such retirement, an outside window of said large room was raised, and one of said jurors leaned out of said window and talked to some man, who is unknown to affiant. That said man was

standing on the sidewalk in the court-house yard. That affiant knows that it is was one of the members of the jury in the Barrington murder case, because he had seen him several times before sitting in the jury box. That affiant does not know the name of said juror. That affiant saw said juror afterwards sitting in the jury box trying said case of State of Missouri vs. said Barrington.

That said man to whom said juror was talking was not
1727 Deputy Sheriff Bellaira, nor Deputy Sheriff Ossenfort, nor Deputy Sheriff Schnecko, nor Mr. Hencken, the sheriff.

JOHN R. BENNETT.

Subscribed and sworn to before me this 2d day of April, 1904.

[SEAL.] F. J. HOLLOCHER,
Clerk Circuit Court.
By F. L. HENCKEN, *D. C.*

On the 18th day of April, 1904, the court, on considering said motion for a new trial, overruled the same, to which order overruling the same the defendant then and there duly excepted and still excepts.

Which order overruling said motion for a new trial was entered upon the record of said court in words and figures as follows, to wit:

MONDAY, *April 18th, 1904.*

STATE OF MISSOURI
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Comes now at this day the State's attorney for the State, and said defendant is brought into court and appears in his own proper person, and thereupon the motion of said defendant for a new trial having been duly and fully considered, it is now ordered and adjudged by the court that said motion be and the same hereby is overruled.

On April 20th, 1904, defendant duly filed his motion in arrest of judgment, which motion was and is in words and figures as follows, to wit:

Motion in arrest of judgment.

1728 In the Circuit Court of St. Louis County in the State of Missouri. January Term, 1904.

THE STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT.

Now comes defendant, Frederick Seymour Barrington, both in person and by counsel, and moves the court that no judgment be ren-

dered on the verdict of the jury in the above-entitled cause, for the following reasons, to wit:

I.

Because the grand jury who found the indictment had no legal authority to inquire into the offense charged, by reason of its not being within the jurisdiction of the court.

II.

Because the indictment and each count thereof does not state sufficient facts to constitute a public offense.

III.

Because the verdict is insufficient to sustain a judgment.

IV.

Because the verdict is general and does not specify on which count the defendant is found guilty.

V.

Because the court erred in overruling defendant's motion to quash the indictment, and in violation of the State and Federal constitutions and the amendments thereof, and in violation of the laws of the United States, and in violation of the laws or nations, and of the treaties of the United States, and especially the treaties between the United States and Great Britain.

1729

VI.

Because the court erred in overruling defendant's demurrer to the indictment, in violation of the State and Federal constitutions and the amendments thereof, in violation of the laws of nations, and of the treaties of the United States, and especially the treaties between the United States and Great Britain.

VII.

Because the court erred in overruling defendant's plea in abatement to the said indictment and cause, in violation of the State and Federal constitutions and the amendments thereof, in violation of the laws of the United States, and in violation of the laws of nations, and of the treaties of the United States, and especially the treaties between United States and Great Britain.

VIII.

Because the court erred in overruling the challenge to the array of the special petit jurors summoned for the trial of said cause.

IX.

Because the court erred in overruling the motion to quash the special venire on which jurors were summoned for the trial of said cause.

X.

Because the court erred in overruling defendant's objection to the State's challenging peremptorily eight or any other number of the panel of jurors summoned for the trial of said cause.

XI.

Because the verdict is contrary to law and to the weight of
1730 evidence, and is for the State when it should have been for the defendant.

XII.

Because the trial of the plea in abatement was without a jury.

XIII.

Because the finding, decision, and judgment on the plea in abatement was for the wrong party and was contrary to law, except so much of the finding as declares defendant to be a subject of Great Britain.

XIV.

Because of improper joinder of counts and offenses in the one indictment.

XV.

Because the indictment and also each count thereof is vague, indefinite, and uncertain.

XVI.

Because of the inconsistence of each count with all of remainder of the counts in said indictment.

XVII.

Because the names of the prosecuting witnesses were not endorsed on the indictment.

XVIII.

Because neither the indictment nor any of the counts thereof state that any offense was committed contrary to the statutes in such cases made and provided.

XIX.

Because neither said indictment, nor any of its counts, charge specifically, definitely, or with certainty that defendant killed or murdered the alleged deceased, nor inform defendant of what act he is charged to have done from which the alleged deceased died.

1731

XX.

Because the 3d count of said indictment is vague, indefinite, uncertain, and inspecific throughout, and also in the following particulars:

1st. As to what caused or was the proximate cause of the alleged death of the alleged deceased, and attempts to charge two immediate and proximate causes of one alleged death.

2d. In alleging that "immediately after inflicting said gunshot wounds" that defendant threw the alleged deceased into a pond, whereas no "gunshot" wounds, or use of a "gun" or "guns," are otherwise alleged or referred to in said indictment.

3d. In attempting to allege that something was "shot off and discharged" without adequately stating what was shot off and discharged.

XXI.

Because the 3d count of said indictment is vague, indefinite, uncertain, inspecific, and argumentative, so far as it attempts to charge the giving of mortal wounds.

XXII.

Because the 2d count of the indictment is inconsistent with and repugnant to counts one, three, four, and five in that it attempts to charge a homicide by means of drowning, whereas counts four and five attempt to charge a homicide in a manner and by means unknown to the grand jurors, and whereas count one attempts to charge a homicide by shooting, and count three attempts to charge a homicide by shooting and drowning.

XXIII.

Because the 2d count of the indictment is vague, indefinite, uncertain, and inspecific.

1732 Because the 1st count of the indictment does not set forth sufficient facts to charge an assault or assault and robbery.

XXV.

Because the 1st count of the indictment is vague, indefinite, uncertain, and inspecific.

XXVI.

Because the 1st count of the indictment is inconsistent with and repugnant to all of the other counts in the indictment.

XXVII.

Because the indictment contained five counts, three of which attempted to charge a murder by means known to the grand jurors, and two of which attempted to charge a murder by means unknown to the grand jurors.

XXVIII.

Because of inconsistency, multiplicity, and repugnance of said counts, the defendant is being proceeded against in violation of the State and Federal guarantee of due process of law, and in violation of defendant's constitutional right to be specifically informed of the nature and cause of the accusation against him.

FREDERICK SEYMOUR BARRINGTON,
Defendant.

SHELLEY GROVER,
WILFRED JONES,
Attys. for Deft. Frederick Seymour Barrington.

Said motion is endorsed "Filed April 20, 1904. F. J. Hollocher, clerk."

On the 23rd day of April, 1904, the court, on consider-
1733 ing said motion in arrest of judgment, overruled the same, to which order overruling the same defendant then and there duly excepted and still excepts.

Which order overruling said motion in arrest of judgment was entered upon the record of said court in words and figures as follows, to wit:

SATURDAY, *April 23d, 1904.*

THE STATE OF MISSOURI, PLAINTIFF,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT. } Murder, first degree.

Comes now at this day the prosecuting attorney for the State, and said defendant being in custody, is brought into court and appears in his own proper person, as well as by his counsel, Shelley Grover and Wilfred Jones, esqs. And thereupon said defendant's motion in arrest of judgment, heretofore filed herein, having been duly and fully considered, is by the court hereby overruled.

* * * * * * *

1740 And afterwards, to wit, on the 10th day of October, 1905, the further following proceedings were had in said cause, viz:

STATE OF MO., RESP.,
v.
F. S. BARRINGTON, APP.

Come now the said parties by attorneys, and after argument herein, submit this cause to the court.

And afterwards, to wit, on the 31st day of January, 1906, the further following proceedings were had in said cause, viz:

STATE OF MISSOURI, RESPONDENT,
vs.
FREDERICK SEYMOUR BARRINGTON, APPELLANT. | Appeal from St. Louis County Circuit Court.

Now at this day come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said St. Louis County Circuit Court rendered, be in all things affirmed and
1741 stand in full force and effect; and that the said respondent recover against the said appellant its costs and charges herein expended, and have therefor execution. And it is further considered and adjudged by the court that the judgment and sentence of the St. Louis County Circuit Court passed upon the said Frederick Seymour Barrington, appellant herein, to be executed on the 14th day of June, 1904, be in all things executed by the sheriff of St. Louis County, Missouri, on Thursday, the 15th day of March, 1906. (Opinion filed.)

* * * * * * *

1824 And afterwards, to wit, on the 8th day of February, 1906, the further following proceedings were had in said cause, viz:

STATE OF MO., RESP.,
v.
F. S. BARRINGTON, APP.

Comes now the said appellant, by attorney, and files his motion for a rehearing herein and to transfer this cause to the court in banc.

With said motions for rehearing and to transfer to court in banc are in words and figures as follows, to wit:

In the Supreme Court of the State of Missouri, October term, 1905.
Division No. 2.

STATE OF MISSOURI, PLAINTIFF-RESPONDENT,
vs.
FREDERICK SEYMOUR BARRINGTON, DEFENDANT-APPELLANT. | No. 12577.

Now comes Frederick S. Barrington, defendant and appellant herein, and moves that said cause be transferred to the court in banc,

and that the same be reheard and reexamined in the court in banc, for the following reasons, to wit:

I.

Because the following Federal questions are raised in the record and decided adversely to defendant, to wit:

1st. Defendant alleges that said record shows that he has not had a fair and impartial trial as guaranteed by the 14th amendment to the Constitution of the United States.

1825 2nd. That under the laws of nations, as well as under the treaty of peace and commerce between the United States and Great Britain, defendant has not had a fair and impartial trial of said cause, and that there has been a judicial denial of a fair or impartial trial, in this:

(a) That defendant was tried before a jury selected from a community overwhelmed with prejudice against defendant, both as a man and as such defendant, whereas a fair and impartial trial could have been secured and given to defendant by awarding a change of venue, instead of denying such change.

(b) Because defendant has been denied those rights of fundamental justice to be fully informed of who his accusers are and who are the witnesses against him so he could prepare to meet their evidence, and because defendant was by the State mislead as to who were or would be witnesses against him.

That under the laws of nations, under natural law, and the fundamental law of justice in all civilized nations, and the 14th amendment prohibiting any State from taking life or liberty without due process of law, or from denying to anyone the equal protection of the law, the defendant is entitled to a fair and impartial trial, before an unprejudiced judge and jurors; and in this cause such fair trial has been denied.

Because the laws of nations were violated by the Circuit Court in refusing to cite the theatrical company for contempt, but the company was allowed to proceed to play the "Desperate Lord Barrington," thus prejudicing mankind against defendant and his case while defendant was in jail, within eight miles of where the play was being played for a week, thus making a mockery of defendant before the community in which he was to be tried.

1826 II.

That a refusal of a court to proceed against parties making a public mockery of an incarcerated defendant, and permitting the prejudicing of mankind against him so he can not get a fair trial for his life is a denial of defendant's rights to the equal protection of the law.

III.

Defendant further moves to transfer this case to the court in bank because it involves the subject of the general law of practice, to wit:

As to whether or not the right to a change of venue is not secured by the Constitution as a matter of right instead of being a matter of judicial discretion.

IV.

Because it is manifest from the mud-guard jewelry incident, from the general illegality and cruelty of the police sweat-box system as applied in this case, and from the various errors that appear in the 21 points of defendant's brief the defendant has not been fairly convicted, and has probably been convicted as the result of the conspiracy of other persons.

FREDERICK SEYMOUR BARRINGTON,
By SHELLEY GROVER,
Defendant's Counsel.

The portions of appellant's brief that relate to this motion are the following pages: 43 to 51, 20 to 24, 77 to 81.

To HERBERT S. HADLEY, *Attorney-General State of Missouri:*

Take notice that the foregoing motion for rehearing will be filed in the Missouri Supreme Court on Thursday, February 8, 1906.

SHELLEY GROVER,
Attorney for Barrington, Defendant.

1827 Service acknowledged February 8, 1906.

HERBERT S. HADLEY,
Attorney-General.
JOHN KENNISH,
Asst. Atty. Gen'l.

And afterwards, to wit, on the 6th day of March, 1906, the further following proceedings were had in said cause, viz:

STATE OF MO., RESP.,
v.
F. S. BARRINGTON, APP.

Now, at this day, the court having fully considered and understood the motion heretofore filed by said appellant, to transfer this cause to the court in banc, doth order that said motion be sustained, and this cause is transferred accordingly.

And afterwards, to wit, on the 4th day of May, 1906, the further following proceedings were had in said cause, viz:

STATE OF MO., RESP.,
v.
F. S. BARRINGTON, APP.

Come now the said parties, by attorneys, and submit this cause to the court on briefs.

And afterwards, to wit, on the 1st day of June, 1906, the further following proceedings were had in said cause, viz:

STATE OF MISSOURI, RESPONDENT,
vs.
FREDERICK SEYMOUR BARRINGTON, APPELLANT. } Appeal from St. Louis County Circuit Court.

1828 Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said St. Louis County Circuit Court rendered, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellant its costs and charges herein expended, and have therefor execution. And it is further considered and adjudged by the court that the judgment and sentence of the St. Louis County Circuit Court passed upon the said Frederick Seymour Barrington, appellant herein, to be executed on the 14th day of June, 1904, be in all things executed by the sheriff of St. Louis County, Missouri, on Thursday, the 26th day of July, 1906. (Opinions filed.)

Which said opinions are in words and figures as follows, to-wit:

1829 In the Supeme Court of Missouri. Division No. 2. October term, 1905.

STATE OF MISSOURI, APPELLANT,
vs.
FREDERICK SEYMOUR BARRINGTON, APPELLANT,

On Saturday, March 5, 1904, the appellant in this cause was convicted in the Circuit Court of St. Louis County of murder of the first degree. The indictment was filed Oct 2, 1903, and charged the defendant in five separate counts with the murder of James P. McCann, at St. Louis County, on the 18th day of June, 1903. The names of forty-four witnesses were endorsed on the back of the indictment.

The defendant was arraigned on October 6, 1903, and filed a motion to quash the indictment, which motion the court, after hearing the evidence thereon, overruled.

November 7, 1903, the defendant filed a demurrer to the indictment, which on the same day was overruled.

On the last-named date the defendant filed a plea in abatement, which was overruled by the court, except that the court found that the defendant was a citizen of Great Britain, and thereupon the defendant was formally arraigned and entered a plea of not guilty.

On December 24, 1903, the defendant filed an application for a citation for contempt against certain parties, and a second application for a similar citation on the 28th of December, 1903, on which last-named date the court, after hearing evidence thereon, ordered that said application be denied.

January 7, 1904, the defendant filed his application for a change of venue, on the ground of the prejudice of the inhabitants of the county, which application, after hearing the evidence thereon, was overruled by the court, and the cause set for trial February 23, 1904.

On February 20, 1904, defendant filed his term bill of
1830 exceptions.

On the 23rd day of February, 1904, the defendant filed a motion to quash the special venire theretofore ordered, for the alleged reason that the defendant was not present when the court made the order therefor. This motion being overruled, defendant filed his challenge to the array, alleging the same reason as contained in the motion to quash the venire, which challenge was also overruled.

Before the jury was sworn to try the case, the prosecuting attorney, over the objection of the defendant, entered a nolle prosequi as to the fifth count of the indictment.

The defendant then moved the court to compel the State to elect upon which of the four counts of the indictment it would go to trial, which motion was overruled by the court.

The indictment upon which this conviction is predicated being assailed, it is well to reproduce it here. The offense for the commission of which the defendant was convicted, was thus charged in the indictment.

Indictment.

STATE OF MISSOURI, *County of St. Louis, ss:*

In the Circuit Court of St. Louis County. September term, 1903.

The grand jurors for the State of Missouri, now here in court, duly empaneled, sworn and charged to inquire within and for the body of the county of St. Loius and State of Missouri aforesaid, upon their oath present and charge that one Frederick Seymour Barrington, on the 18th day of June, A. D. 1903, at the county of St. Louis and in the State of Missouri, in and upon one James P. McCann then and there being, feloniously, willfully, premeditatedly, deliberately, on purpose, and of his malice aforethought did make an assault; and with a dangerous and deadly weapon, to wit, a revolving pistol then and there loaded with gunpowder and leaden balls which he,
1831 the said Frederick Seymour Barrington, in his hand then and there had and held, at and against him, the said James P. McCann, then and there feloniously, willfully, deliberately, premeditatedly, on purpose, and of his malice aforethought did shoot off and discharge, and with the revolving pistol aforesaid and the leaden balls aforesaid, then and there feloniously, willfully, premeditatedly, deliberately, on purpose, and of his malice aforethought did shoot, strike, and penetrate and wound him, the said James P. McCann, in and about the vital part of the body of him the said James P. McCann, in the head and body of him the said James P.

McCann, giving to him the said James P. McCann, at the county of St. Louis aforesaid and State of Missouri, on the said 18th day of June, 1903, with a dangerous and deadly weapon, to wit, the revolving pistol aforesaid and the gunpowder and leaden balls aforesaid, in and upon the head and body of him, the said James P. McCann, divers and sundry mortal wounds, of which said mortal wounds, he, the said James P. McCann, at the county of St. Louis and State of Missouri aforesaid, on the said 18th day of June, A. D. 1903, then and there of the mortal wounds aforesaid instantly died. And so the grand jurors, upon their oath aforesaid, do say that the said Frederick Seymour Barrington, him the said James P. McCann, in the manner and by the means aforesaid, feloniously, willfully deliberately, on purpose, and of his malice aforethought did kill and murder, against the peace and dignity of the State.

And the grand jurors aforesaid, on their oath aforesaid, do further present and charge that the said Frederick Seymour Barrington, on the 18th day of June, A. D. 1903, at the county of St. Louis, in the State of Missouri, aforesaid, with force and arms and with great violence in and upon one James P. McCann then and there being, feloniously, willfully, premeditatedly, deliberately, and of his malice aforethought did make an assault, and that him, the said Frederick Seymour Barrington, then and there feloniously, premeditatedly, deliberately, willfully, and of his malice aforethought did take
1832 the said James P. McCann into both the hands and arms of him, the said Frederick Seymour Barrington, and did then and there feloniously, premeditatedly, deliberately, willfully, and of his malice aforethought cast, throw, and push the said James P. McCann into a certain pond there situate, wherein the said pond there was a great quantity of water, by means of which said casting, throwing, and pushing of the said James P. McCann into the pond aforesaid by the said Frederick Seymour Barrington in the manner and form as aforesaid, he, the said James P. McCann, in the pond aforesaid, with the water aforesaid, was then and there choked, suffocated, strangled, and drowned, of which said choking, suffocation, strangling, and drowning he, the said James P. McCann, then and there, at the county of St. Louis, in the State of Missouri, aforesaid, on the 18th day of June, A. D. 1903, instantly died. And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Frederick Seymour Barrington, him, the said James P. McCann, in the manner and by the means aforesaid feloniously, willfully, deliberately, premeditatedly, and of his malice aforethought did kill and murder, against the peace and dignity of the State.

And the grand jurors aforesaid, on their oath aforesaid, do further present and charge that the said Frederick Seymour Barrington on the 18th day of June, A. D. 1903, at the county of St. Louis and State of Missouri, in and upon the said James P. McCann, then and there being feloniously, willfully, premeditatedly, deliberately, on purpose and of his malice aforethought did make an assault, and with a dangerous and deadly weapon, to wit, a revolving pistol loaded

then and there with gunpowder and leaden balls which he, the said Frederick Seymour Barrington, in his hands then and there had and held, at and against him, the said James P. McCann, then and there feloniously, deliberately, willfully, premeditatedly, on purpose, and of his malice aforethought did shoot off and discharge and with
the revolving pistol aforesaid and the leaden balls afore-
1833 said, then and there feloniously, willfully, premeditatedly, deliberately, on purpose, and of his malice aforethought did shoot, strike, and penetrate him, the said James P. McCann, in and about a vital part of the body of him, the said James P. McCann, in the head and body of him, the said James P. McCann, giving to him, the said James P. McCann, at the county of St. Louis aforesaid, and State of Missouri, on the 18th day of June, A. D. 1903, with a dangerous and deadly weapon, to wit, the revolving pistol aforesaid and the gunpowder and leaden balls aforesaid, in and upon the head and body of him, the said James P. McCann, divers and sundry mortal wounds, and the said James P. McCann by reason of said mortal wounds so inflicted as aforesaid then and there became and was unconscious and insensible and in a stupor of body and mind, and was then and there helpless and wholly in the power and control of the said Frederick Seymour Barrington, and that the said Frederick Seymour Barrington then and there well knowing the helpless, unconscious, and insensible condition of the said James P. McCann, and wickedly contriving and intending then and there the said James P. McCann to kill and murder, he, the said Frederick Seymour Barrington, on the said 18th day of June, 1903, at the county of St. Louis and State of Missouri aforesaid, then and there immediately after giving and inflicting the said gunshot wounds in the manner and form aforesaid and at the time and place aforesaid, in and upon the body of the said James P. McCann did then and there with force and arms and with great violence in and upon him, the said James P. McCann, then and there, being feloniously, willfully, premeditatedly, deliberately, and of his malice aforethought, did make an assault, and that him, the said Frederick Seymour Barrington, then and there feloniously, premeditatedly, deliberately, willfully, and of his malice aforethought did take the said James P. McCann around the neck and body of him, the said James P. McCann, into both the hands
and arms of him, the said Frederick Seymour Barrington, and
1834 did then and there feloniously, premeditatedly, deliberately, willfully, and of his malice aforethought cast, throw, and push the said James P. McCann into a certain pond there situate, wherein said pond there was a great qauntity of water, by means of which said casting, throwing, and pushing of the said James P. McCann into the pond aforesaid by the said Frederick Seymour Barrington in the manner and form as aforesaid, he, the said James P. McCann, in the pond aforesaid, was then and there choked, strangled, and suffocated and by reason of the said choking, strangling, and suffocating with the water aforesaid, in the manner and form aforesaid, as well as of the mortal wounds inflicted upon him, the said James P.

McCann, by the said Frederick Seymour Barrington, in the manner and form as aforesaid, he, the said James P. McCann, at the county of St. Louis and State of Missouri aforesaid, on the said 18th day of June, 1903, then and there of the mortal wounds aforesaid and the choking, strangling, and suffocating aforesaid then and there instantly died. And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Frederick Seymour Barrington, him, the said James P. McCann, in the manner and by the means aforesaid, feloniously, willfully, deliberately, premeditatedly, and of his malice aforethought did kill and murder, against the peace and dignity of the State.

And the grand jurours aforesaid, on their oath aforesaid, do further present and charge that the said Frederick Seymour Barrington on the 18th day of June, A. D. 1903, at the county of St. Louis and State of Missouri aforesaid, in and upon the said James P. McCann feloniously, willfully, deliberately, premeditatedly, and of his malice aforethought, did make an assault, and the said James P. McCann in some way and manner and by some means, instruments, and weapons to these jurors unknown, did then and there feloniously, willfully, deliberately, premeditatedly, and of his malice aforethought, deprive of life, so that the said James P. McCann then and there instantly died. And so the grand jurours aforesaid, upon their oath aforesaid, do say that the said Frederick Seymour Bar-
1835 rington, him, the said James P. McCann, in the manner and by the means aforesaid feloniously, willfully, deliberately, premeditatedly, and of his malice aforethought did kill and murder, against the peace and dignity of the State.

And the grand jurours aforesaid, on their oath aforesaid, do further present and charge that the said Frederick Seymour Barrington on the 18th day of June, A. D. 1903, at the county of St. Louis, in the State of Missouri aforesaid, in the perpetration of a robbery from the person of one James P. McCann, with force and arms, did unlawfully, willfully, feloniously, and of his malice aforethought make an assault in and upon the said James P. McCann, and that the said Frederick Seymour Barrington in some way and manner and by some means, devices, instruments, and weapons, to these grand jurors unknown, did then and there unlawfully, feloniously, willfully, and of his malice aforethought, deprive the said James P. McCann of life, so that the said James P. McCann did then and there instantly die. And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Frederick Seymour Barrington, him, the said James P. McCann, in the manner and by the means aforesaid, in the perpetration of the robbery aforesaid, unlawfully, feloniously, willfully, and of his malice aforethought, did kill and murder, against the peace and dignity of the State.

ROWLAND L. JOHNSON,
Prosecuting Attorney for said County of St. Louis, Mo."

As heretofore stated, on January 7, 1904, defendant filed his application in due form, praying for a change of venue, on the ground of the prejudice of the inhabitants of the county, and on a hearing on this application on January 16 following the same was by the court overruled. The evidence introduced consisted of testimony of witnesses and newspaper clippings. The witnesses introduced by defendant were forty-five in number and from different parts of the county. Some of them testified to the existence of prejudice against the defendant; that this prejudice consisted of gossip
1836 and expressions of the people to the effect that defendant was guilty of murdering McCann and ought to be hung; that he was guilty without a doubt; that he ought to be hung on general principles; that the prevalent opinion was that he was guilty; that he was a rascal from the beginning; that ninety per cent of the people thought him guilty two months after the alleged crime was committed, but since then twenty per cent has changed; that these expressions were based on newspaper reports, and that the sentiment was gradually changing in favor of defendant; that the people seemed to be impressed with the enormity of the crime; that at the preliminary hearing when a ruling was made adverse to defendant there was applause. Other witnesses testified that the expression of opinion was about evenly divided; that for two or three months after the alleged crime the expressions were against the defendant, but that it had naturally died out; that the people did not seem to have any interest in it and that there had been no expression of opinion one way or the other for two or three months; that some believed that McCann was still alive and would show up at the proper time, and that it was a World's Fair scheme; that they had heard as much said in defendant's favor as against him; that he would never be convicted, and could get as fair trial in the county as anywhere; that some people did not place much confidence in newspaper reports. Other witnesses testified that they had heard defendant commended for doing a public service in connection with his marriage to Miss Cochrane—that it was a good way of guarding other girls against titles—and that they had heard sympathy expressed for defendant on account of his marriage with Miss Cochrane; while some more that the sentiment on that subject was about equally divided for and against him. That others take it for granted that what they see in newspaper is correct; others had heard no expressions one way or another. Counsel for defendant also offered and read in evidence copies of the St. Louis Globe Democrat, Republic, Post-Dispatch, World, and Chronicle, containing sensational
1837 accounts of the killing and defendant, embellished with pictures of the defendant, the scene of the alleged crime, the burial of McCann, hat, pistol, and watch and chain, property of McCann, found on defendant when arrested, declaring defendant guilty of McCann's murder; that he was an escaped convict from Newgate Prison, England, and as having escaped by means of his forging letters and documents for pardon; that he was a many-times murderer,

as having murdered a Lieutenant Roby, of the English army, and of having probably robbed and murdered one John Moog in St. Louis; as being a many-time bigamist; as being one Barton alias Burgoyne, one was a notorious English criminal; as being a general "all around" confidence man and "crook," and as possibly being the notorious "Jack the Ripper." These newspaper reports were published along every few days, from the time defendant was arrested up to a short time before the hearing on the application for a change of venue. Defendant also offered evidence showing that a St. Louis theatre was advertising and producing a play known and advertised as "The Desperate Lord Barrington," and written of and concerning the defendant while he was in jail awaiting trial on the charge of killing McCann; that this play dealt with particulars, places, and incidents in this cause, including among other things Bonfils Quarry and an impersonation and representation of defendant in the St. Louis County jail awaiting trial on this charge.

The State in rebuttal of this showing called as witnesses county and city officers, Government officers, members of the bar of high standing in this court, newspaper men, business men, and farmers of long residence in different portions of the county, to the number of thirty-seven, whose testimony tended to show that no such prejudice existed in the county as would prevent defendant securing a fair and impartial trial. These witnesses testified that while the case was discussed considerably at first and some of the people in certain portions of the county thought defendant guilty, that others had expressed themselves favorable toward defendant, and that there had been no discussion of the matter for months; that it had ceased
1838 to be a matter of interest; that the expressions of opinion in this matter in other localities was about evenly divided; that the identity of McCann's body was questioned, and that there were expressions that a case could not be made against defendant; that McCann would turn up at the proper time, and that it was a fake and a scheme gotten up by defendant's attorneys to make money; that in several of the most thickly settled portions of the county the majority of the people seemed to be favorable to defendant; that they had heard expressions of sympathy for defendant on account of his trouble with his wife and being placed in jail, and that the punishment imposed was too severe; that the case had been spoken of in a jocular way; that in some localities they had heard expressions that if it was as printed in the newspapers defendant ought to be hung. The most of these expressions were made by nonresidents of the county. That there had been no discussion of the case since the finding of the body, and that neither defendant or McCann were known in the county prior to the alleged offense. That in one locality the prevailing opinion immediately after the alleged crime was committed was that defendant was not guilty, and that this opinion had continued up to the time of the hearing of this application; and that at Clayton, the county seat, where defendant was in

jail awaiting trial, the majority of the people seemed to be favorable to him.

At the close of the evidence upon the application, it was submitted to the court, and by the court overruled.

To the indictment defendant entered a plea of not guilty. The testimony introduced upon the trail of this cause, as preserved in the record, presents a volume of about three thousand pages; hence we shall not undertake in this opinion to reproduce in detail the testimony of all the witnesses as disclosed by the record; such a course can serve no good purpose, and it is sufficient to say that we have carefully considered all of the testimony introduced by both the State and the defendant which is preserved in the record and shall only un-
1839 dertake to state the main and important facts in this cause which the testimony tends to prove.

The evidence on behalf of the State was circumstantial and tended to show that James P. McCann, deceased, was a native of Kentucky. He was a large, well-built man, about forty-five years of age. He owned race horses and bet on the races. He seemed to be well supplied with money and was very generous with it among his friends. He had been married in Kentucky and divorced, and on the 14th day of July, 1900, was married to a second wife, with whom he was living at the time of his decease. After his second marriage, McCann and his wife lived in Chicago, and thereafter moved to the city of St. Louis. In the latter place, Mrs. McCann on her own account engaged in the business of conducting a matrimonial agency (as she had formerly done in Chicago), and for that purpose maintained an office in the business part of the city. In the spring of 1903 McCann rented the property at 2901 Franklin avenue, in the city of St. Louis, intending to run it as a hotel during the World's Fair. They moved to this place about the 12th day of May, 1903, and called it the "Leland Hotel." At this place, two negroes, Charles and Oney Morrison, husband and wife, were employed as servants. The defendant came to the hotel a few days after the McCanns moved there, and a young man named Tom Leonard, who was acquainted with McCann, came there to board about a week before McCann disappeared. These persons were the only occupants of the Leland Hotel, when McCann, on the evening of the 18th day of June, 1903, in company with the defendant, left the hotel to be gone only a few minutes, but never returned.

The defendant represented himself to be an Englishman, and was known as "Lord Barrington." McCann and Barrington met for the first time in April, 1903. Shortly before this meeting the defendant had received a good deal of newspaper notoriety by reason of his marriage to a young lady from Kansas City and a prosecution in the city of St. Louis, resulting in defendant's incarceration in the city workhouse. After defendant's release from the workhouse, he
1840 was employed at a saloon or cafe on Broadway and Chestnut street, in the city of St. Louis, which was then called the "Lord Barrington Saloon." McCann met the defendant at this

saloon, expressed his sympathy for him, and gave the defendant fifty dollars as a present. The following day the deceased introduced his wife to the defendant at the corner of this saloon. Shortly after this defendant told McCann of his needy circumstances and asked if he could stay at McCann's house and expressed his willingness to do anything he could to pay for his board. McCann then loaned defendant $50.00 and defendant went to the Leland Hotel to live. Defendant helped around the hotel, went out and around with McCann frequently, collected money on races for McCann, and had been at the hotel about a month when McCann was last seen alive.

Wellston is a town or street-car station, situated at the northwest boundary of the city of St. Louis. The St. Louis, St. Charles and Western Railway, commonly called the St. Charles Railway, is an electric suburban railway running from Wellston in a northwesterly direction to the city of St. Charles. About twelve miles from Wellston, on said railway, there is a station, merely a platform and stopping place for the cars, called Bonfils Station. From this station a foot path leads in a southwesterly direction a distance of about one hundred yards and connects with Taussig avenue. This avenue leads in a southerly direction, and at a distance of about three hundred yards from Bonfils passes alongside of and to the left of an abandoned stone quarry. This quarry extends back from the road some distance, and is almost surrounded with brush and shrubbery.

Shortly before the disappearance of McCann the Missouri River had been at a high stage and the water from the river had run through the brush into this quarry, so that at the time in question the water in the quarry, though it had then ceased to run in, was from six to ten feet deep. There was a steep bank on the west side of the quarry and a road not much traveled led off from Taussig avenue around back of the quarry on the west side. Two
1841 families lived on Taussig avenue, about two hundred yards from the quarry. On account of the high stage of the Missouri River on the 18th day of June, 1903, and for sometime prior, the St. Charles railroad did not run cars through to the city of St. Charles, but stopped at Bonfils Station, and from there returned to Wellston.

The defendant visited Bonfils Station on the 17th day of June, 1903, stating upon his return that he had been out in St. Louis County visiting some rich English friends. For some time before the disappearance of McCann the defendant had been talking about his wealthy English friends in St. Louis County, whom he had been out to visit, and told McCann that he, McCann and his wife, were invited out there. The day McCann disappeared the defendant talked to him about certain pension papers which he claimed to have and on which he said $2,500 would be due the 19th day of July, following; that his English friends would advance him one thousand dollars on these papers and asked McCann to go along with him to get the money; said he wanted to use the money in his defense of the suit for divorce brought by his wife. At the supper table on the 18th

day of June, 1903, McCann remarked about the defendant eating so little, and the defendant replied that they would have a supper later on. After supper McCann told his wife, in the defendant's hearing, that they were invited out to Mr. Barrington's friends that evening for supper, and suggested as to what dress she should wear. While Mrs. McCann was getting ready her husband came to her room and told her she need not dress for the supper as she was not invited. Mrs. McCann asked her husband about the mistake and he answered that it had been his misunderstanding. After supper, when McCann, his wife, and Leonard were sitting in the front yard, the defendant came out of the house and asked Mrs. McCann if she had any headache powders. Mrs. McCann said she had not, and as she had a severe headache she would like to have one herself. McCann said he would go and get the powders. He got five dollars from his wife
1842 and after going across the street to get the returns on the races, McCann came back and asked the defendant to go with him to the drug store to get the headache powders. Defendant and McCann went away together, McCann saying to his wife, after he was outside of the gate, that he would return in a short while. This was between 7.30 and 8 o'clock in the evening. McCann never did return, but the defendant returned alone to the Leland Hotel about 9 o'clock on the morning of the next day.

Where McCann and the defendant went and what they did from the time they left the hotel until they were seen at Wellston at 10 o'clock that night is known only from the statements of the defendant, except that they were seen on the street car about 9 o'clock by a witness who heard them ask as to the time the St. Charles car left Wellston, and heard the defendant say that if they couldn't catch the 9 o'clock car they could catch the next one, and the further fact that the defendant had in his possession upon his return a flashlight tintype picture of himself and McCann taken at the Suburban Garden that night. At 10 o'clock on the night of the 18th of June, 1903, McCann and defendant boarded a car at Wellston and rode to Bonfils Station. There were but six passengers on the car when it left Wellston, and all but McCann and defendant had left the car before its arrival at Bonfils. On the car the defendant sat in the back seat and McCann in the seat next in front. McCann talked to the conductor and the passengers. He told the conductor they were going to Bonfils on business. At that time two fares had been collected and it was three fares to the river. He jokingly told the conductor that he did not think he would pay any more fare. The conductor replied that he guessed he would, and McCann then remarked, "Oh, I don't know, how big is your gun?" McCann then paid the fares. The defendant held his head down and said nothing. McCann inquired of the conductor as to when the cars left Bonfils for the city, and on being informed that another car would be there later that night
1843 said he wanted to get back on that car. They got off the car at Bonfils, McCann getting off first, and the motorman saw them start up the little path leading to Taussig avenue, walking

side by side. The car reached Bonfils at 10.35 p. m., and was due to leave on the return trip at 11.10 p. m. About fifteen minutes after McCann and defendant left the car, the conductor and motorman heard coming from the direction of the quarry, a pistol shot, and then a cry followed by a second pistol shot. This was also heard by other witnesses living near the quarry. The next day, June 19th, the defendant was seen alone by the conductor and motorman of the first car going to Bonfils about 5.30 in the morning. The defendant was then walking east toward the city, being about three or four miles from Bonfils, and about eight miles from Wellston. These railroad men passed the defendant several times that morning as he continued his walk toward the city. The defendant's trousers were muddy and wet from the knees down, and each time except the last, as the car approached, the defendant went away from the track toward a house or behind a shed, or shifted his hat to the side of his head on which the car was passing as though attempting to conceal his identity. When McCann and defendant went out the night before, McCann was carrying a cane and wearing a straw or Panama hat; the defendant was wearing a black hat. These were the hats respectfully worn by these parties that night when the flashlight picture offered in evidence was taken at Suburban Garden. When defendant returned on the morning of the 19th, he was carrying a cane and wearing a straw or Panama hat, both of which articles were afterwards identified as the property of McCann. Arriving at Wellston the defendant boarded a car and went on down town. When he arrived at the Leland Hotel, about 9 a. m., Mrs. McCann had left for her place of business in the city, hoping to find her husband there or at some of the hotels or places frequented by him. The defendant entered the hotel by way of the basement. Charles and Oney Morrison were in the house and Charles Morrison admitted the defendant into the basement by the side entrance. His clothing was wet, spattered with mud and soaked with blood; the blood had become thick and black. Morrison asked him what was the matter, and he said: "Charlie, I have had a terrible time; I invited McCann out to take supper with me and that is what I get for it." He asked where Mrs. McCann was and also Mr. Leonard, and said he wanted to get his clothes off as soon as he could, as he didn't want Mrs. McCann or Leonard to see them. He then went upstairs and in a short time called Morrison and told him to "take these clothes and get them off the place right away." Morrison told him he had no place to put them, and the defendant then told Morrison to wash the clothes and put naphtha oil and lye in the water to take out the blood stains. When Morrison was getting the clothes in the defendant's room, he saw a watch on the bed and saw the defendant turn quickly and take a revolver from the bed and walk across the hall and put it in his trunk. In explaining to Morrison how the blood got on his clothes, the defendant said that he and McCann went out to the Suburban Garden and there met two men and two women; that McCann and one woman

1844

went down in the weeds and the woman screamed; that the two men ran to her assistance and knocked McCann down; that defendant ran there to help McCann and was knocked down, falling on McCann; that the men went away, got a carriage, came back, made up with McCann and kicked the defendant and left him unconscious lying in the water in a ditch, and that by rolling over he got the blood on his back. He further said, in the same conversation, that McCann had cut a woman's throat out there and that "he never will come back; if he does come back I will kill him." The defendant's fingers were cut and his thumb was swollen so that Morrison had to assist him to put on his shirt. The defendant visited a barber shop that morning, his right hand was swollen and he made the statement that he had been out for a horse back ride, and that the horse fell on top of him in a ditch about six feet deep and he laid there unconscious for a while, then got up and came back to town.

1845 After looking at different places in the city for her husband, Mrs. McCann returned home about noon and found the defendant there. She asked him where her husband was; he answered that he could not tell her, and if he did tell her it would break her heart. He then told Mrs. McCann the story of the trouble he and McCann got into at Suburban Garden, but it was radically different from the story told Morrison. As told to Mrs. McCann, in the altercation McCann struck the defendant with his cane and then threw the cane to the defendant and told him to keep it as a souvenir; that after the difficulty, while the two men were gone for the carriage, McCann gave defendant instructions as to what to tell his wife when defendant returned; to tell her that he, McCann, had gotten into this trouble and was ashamed to see her, but that he might need money, and on Friday evening he would call her up on the 'phone, and that defendant should come to the 'phone first; that McCann then gave the defendant the ticket on the races for $164.00 (which ticket the defendant then had in his possession) and told him to collect it if it had won and buy himself a swell suit of clothes, take out $27.50, which he said McCann had borrowed from him that night, pay the help, etc.; that McCann told him to take charge of the house and look after things until after he, McCann, came home Saturday afternoon; that defendant answered that he could not run the house with Tom Leonard there, and McCann said to have Leonard go away. The defendant told Mrs. McCann many other things in connection with the trouble at Suburban Garden, as shown by the record, which would require too much space to insert in this statement. He said that the two strange men came back with the carriage, put the woman in, and McCann got in voluntarily; that defendant told McCann not to go with those fellows, and the strange man kicked defendant and threw him in the ditch, where he remained until five o'clock the next morning, when he waked up bloody and spattered with mud.

During the next few days the defendant proceeded to carry out what he claimed were McCann's instructions, by taking charge of the hotel, collecting money on the ticket on the races (Mrs. McCann

insisted on going with him and got part of the money); paid
1846 the Morrisons and had Leonard leave the hotel. He had Morrison go with him to the stable on the hotel property, and asked him if he had ever taken care of any fine race horses and as to how much it would cost to fix up the stable. Morrison remarked that he wished McCann had paid him what he owed him before leaving; the defendant said he had gone to Kentucky and asked "how much is it, Charlie, he owes?" On being told the amount McCann was indebted to Morrison, the defendant remarked, "that is what McCann told me to pay you last night when he left me." Mrs. McCann was fretting and alarmed over the absence of her husband and the defendant tried at different times to calm her. At one time he assured her that he had received a message from McCann at Centralia, Illinois; he visited Mrs. McCann at her office and said, "I have a message from Jim, now cheer up; shortly after you left the house—a woman did the talking, but it was from Jim, and he said for you to send him $300 to Centralia, Illinois, by Tuesday morning." Mrs. McCann said "are you positive it was not Mr. McCann talking!" and the defendant replied: "It was a woman; she came to the 'phone two or three times before she finished the conversation, as if she would go away and talk with McCann and then come back and talk to Mr. Barrington." Mrs. McCann suggested that probably it was a trained nurse, and the defendant said "The woman that spoke talked very sharp and pert, and said, 'tell Jessie so and so, in a very important way.'" Defendant said he asked the woman if he, defendant, should come and bring the money. Mrs. McCann suggested that if the defendant wanted to go and take the money or send it to Centralia she would go with him, to which the defendant replied, "I will find out," and when asked "how," answered "By long distance telephone; they haven't reached there yet, but will be there Tuesday morning." When Mrs. McCann talked about sending her husband money, the defendant said, "Mrs. McCann, my laws, after Jim has done all this, would you send him any money? I never knew any
woman to have such love for a man as you have for Jim Mc-
1847 Cann." Mrs. McCann sent registered letters to Centralia and Vandalia, which letters were returned to her. The defendant had a young man named Mitchell write a pretended letter from McCann to the defendant, stating that he, McCann, could not return just yet, that he was all right, in good hands, and asked the defendant to look after the house and do what the writer had told him to do. He also arranged with him (Mitchell) to call the defendant up on the telephone at the Leland Hotel and tell him that McCann had been found at Chicago and would return in a few days. Mitchell telephoned as requested. The defendant was not at the hotel at the time, and when he returned Oney Morrison met him in the hall and said "Mr. Barrington, someone called you over the 'phone and says your friend has been found in Chicago," the defendant says, "Oh, yes; I know who it is; it is a man looking for Jim; I expect he has found

him; I know who it is and where he found him;" and the defendant called Mrs. McCann to the telephone, and had him repeat to her what he had said to the defendant. Mitchell was a witness at the trial and testified that he knew nothing whatever about McCann, and that what he did in the matter was at the suggestion and request of the defendant, the latter even writing the letter in pencil and handing it to Mitchell to copy, which he did. This letter was taken by the defendant to the telegraph office, where the defendant asked the operator to put it in one of the company's envelopes and address it to Col. F. Seymour Barrington, 2902 Franklin avenue, and have it delivered at one o'clock that day. The letter was delivered according to the defendant's instructions and was read by Mrs. McCann. For several days following her husband's disappearance, Mrs. McCann begged the defendant to go with Morrison or Bohmeyer to the Suburban Garden and see if they could not get some trace of McCann. The defendant, although at different times promising to go, did not, but each time made excuses. On Thursday night, June 25th, just one week from the night McCann disappeared, the defendant was placed under arrest. He told the officers the story of what occurred at the Suburban Garden when he last saw McCann,
1848 which differed materially from the account which had previously given. The officers took him to the Suburban Garden that night, and he showed them the place where he said the difficulty had occurred. The next morning the defendant was released.

On Friday, June 26, 1903, about four o'clock in the afternoon, Louis Tucker was driving by the stone quarry near Bonfils station, and, seeing an object in the water, went to investigate. He found that it was the dead body of a man in a nude state, floating in the water on its back. It was in the far corner of the quarry. Tucker notified the neighbors and several viewed the body. On the next day, Saturday, an inquest was held, but a careful examination was not then made. The body was removed from the pond and buried on the bank of the quarry. The next day, Sunday, the coroner returned, accompanied by Dr. Randle and Dr. Koch. The body was then exhumed and the post-mortem held. The examination disclosed two cuts by a sharp instrument, one extending from the angle of the jaw on the left side round to the front about half an inch beneath the jaw bone, the other extending from the corner of the mouth, a little above, back two and a half or three inches. In probing on the left side of the face, it was found that the upper jaw was fractured, almost shattered, and the probe followed a canal just beneath the whole part of the cheek bone structure to the arch and into the brain cavity. One bullet was found in the brain substance and another was found on the right side just beneath the temporal arch, flattened against the bone. It was not found where the second bullet had entered, but witness testified it had evidently entered from the left side. The wound from the bullet beneath the temporal arch was not necessarily fatal, but the one found in the brain substance was fatal and of such character that

death would probably result instantaneously. There were also two deep gashes found on the left thumb.

The body was identified by many witnesses as the body of James P. McCann. The identification was made by the general ap-
1849 pearance of the body, the teeth, particularly the two upper front teeth, by a mole a little to the left of the right nipple, by a scar below the naval caused by a burn and by McCann's property found in the vicinity of the crime. Two shoes and a sock were found at different times, before the body was discovered in the pond, about two hundred yards from the quarry, near the track of the St. Charles Railway. These were fully identified as McCann's property, and as the shoes and one of the socks he wore when he left on the night of the 18th of June. There was also found near the pond a pocketbook, a blood-stained razor handle, and four 38-calibre cartridges. The pocketbook was identified as McCann's. In September, 1903, some workmen, while at work on the St. Charles Railway fixing a bridge, about three-quarters of a mile from Bonfils and toward St. Louis, having occasion to go out eighty or ninety feet from the track, where the weeds and brush were as high as a man's head, found a coat, shirt, an undershirt, and gold buttons, one with the letters McC engraved thereon. This clothing and the buttons were also fully identified as McCann's.

On Saturday, June 27, 1903, Mrs. McCann told the defendant that he would have to take his trunk and leave the house. He said, "Mrs. McCann, you are turning me out of the house penniless." He then asked her to pay for the clothes that became soiled defending Mr. McCann in that fight. He said, "Mr. McCann told me I should have it." Mrs. McCann says, "If he is alive, he will pay you," and the defendant replied, "I want you to pay me; I don't want to wait for him." He then stated that he did not want to move in the daytime; that the neighbors would see him and make remarks about it. This was about eleven o'clock in the morning. The defendant left the house, and when Mrs. McCann went to the front door the defendant says, "Mrs. McCann, do you want to see Jim? I have seen him three times from the day he has gone; talked to him. If you want to see him I will arrange to see him this evening, and you can take your sister along, and if you think he wants something you
1850 can take him anything you want. We will take it to him, and if you don't want to give it to me you can get disinterested parties, but I don't want Jim to see you personally, he is too cross. I will see him this afternoon and come home and tell you what he said." That day the defendant hired an expressman to take his trunk from the Leland Hotel to the Union Station, and cautioned the expressman not to tell anyone where he was taking the trunk. About four o'clock in the afternoon of the same day the defendant was again placed under arrest and taken to the mounted police station. That night about eight o'clock the defendant was taken in the patrol wagon to the office of the chief of police at the Four Courts. A num-

ber of persons rode in the wagon with the defendant. A board about a foot wide extended horizontally along the outside of the wagon above the wheels and was called a mud guard. The defendant was sitting in the wagon, on the right side, his back to the side of the wagon. On the way the defendant was noticed making nervous, hitching movements and reaching back with his right hand; later that night, directly back of where the defendant had been sitting, a watch, locket, and ring were found on the mud guard of the wagon, which were fully identified as the property of McCann in his lifetime.

At the chief of police's office the defendant was examined as to McCann's disappearance; he was confronted with the railway men, who identified him as one of the men who went to Bonfils on the street car on the night of the 18th of June, 1903, and returned alone the next day. He then, for the first time, admitted that he had gone to Bonfils that night, and from that time on changed the scene of the trouble between the strangers, McCann, and himself on the night of the 18th of June, from the Suburban Garden to Bonfils quarry, and with this exception told the story much as he had told it before. While at the chief's office the trunk the defendant had sent to Union Station was brought in, and McCann's cane and revolver taken
1851 therefrom. This revolver was produced at the trial and identified as the revolver sold to McCann a short time before he disappeared.

On the part of the defendant Dr. Gradwhol testified that he was a physician and surgeon of six years' practice; that he was post-mortem physician to the coroner of St. Louis city and had made a great many post-mortem examinations. That rigor mortis is a stiffening which sets in in the muscles of the body after death, due to the coagulation of the acids of the muscles; that it begins first in the muscles of the lower jaw and then the limbs, and then the body becomes limber; that in the summer rigor mortis begins immediately after death; immediately upon the moment of death there is a beginning of the contraction or stiffening; the length of time it lasts depends upon circumstances; in June, when the thermometer is about 80 degrees or a little higher in a man who is shot, if the body is lying exposed to the elements, in a high temperature, I don't believe rigor mortis would last more than forty-eight hours at the most in the summer; it would not be found in a body that had been dead a week. If a bullet were to enter the brain here, there would be some hemorrhage and an injury to the brain matter of that part—that is, the part of the brain that controls the function of speech; if the bullet entered there about an inch, whether the shot would kill him or not, I would say that he could not give any outcry; if that should enter the left side of the brain of a right-handed man that would cause paralysis of speech; a shot in that part of the brain is not necessarily fatal. That there is a difference between shooting a bullet into a dead man and shooting it into a live man; in the first instance, there would be a difference in the direction it would take; a bullet fired into a living man

is apt to be deflected in its course through the muscle. The muscle in a living man would deflect a bullet like bone, while in a dead
1852 man it would follow a straight course. A bullet fired into a live man, where it strikes a blood vessel, would cause a hemorrhage. This witness identified one of the teeth shown him as an upper incisor—one of the front teeth—and another as one of the bicuspids, lower, either one side or the other, situated about half way back in the arch from the middle line of the angle of the jaw, and stated that it could not possibly be one of the front teeth; that when a body is drowned in the summer time it will come up in about two days; depends on how warm it is; if it is very warm it comes up in twenty-four hours; depends on the amount of decomposition that takes place. In some cases it is possible to tell whether death was caused by drowning or shooting, provided there is not a combination of both. A drowned body shows water in the lungs and stomach, but a body thrown into the water after dead, when it hits the water, it is not possible for the water to enter the stomach or lungs. He stated that it was not possible to find the cause of death of any individual without examination of every vital organ of the body, which includes the organs of the chest and abdomen. He further stated that it had been his experience with bodies that have been in the Mississippi River water in the summer three or four days, that it is a matter of almost impossibility for relatives of these individuals to recognize them; that the features of these individuals are not recognizable; that the effect of decomposition of that kind is to fill the tissues of the body with gas; a body swells up twice its usual proportions when decomposed to that extent. The eyes are protruded from the sockets, the jaws blown out, the lips distended, the tongue is swollen and hangs out sometimes five or six inches, the shoulders, hands, and arms are swollen and the abdomen extended; that is the way it is when seven or eight days in the water. The position of the face of a body that was found in the water which had been either drowned or shot would depend on the way in which the gas formed in the body; as a usual rule you find the body with the face down, but sometimes
1853 they swing around. Upon cross-examination this witness stated that if the person had died or been killed in the nighttime and was thrown into water eight or ten feet deep, shaded with banks and trees, never exposed to the sun or long exposed to the atmosphere, it would depend on the temperature of the water. If the water was cold, it would remain an indefinite time. If the body was killed and thrown in in the nighttime and the water shaded and still, provided that the body remains in one place and submerged, I don't believe it would decompose very much if it was anchored there, submerged—that is, in a cold place. If it was put into one place, where the water was still and cold—that is, below 60 degrees Fahrenheit, I don't believe it would decompose rapidly; a little more above 60 it would be more susceptible to decomposition, and a little below, less; there might be circumstances under which a body would remain two days or three weeks under the water; bodies have been in cold water six months;

it all depends on the atmospheric condition; a light body would rise quicker than a heavy one; rigor mortis appears more rapidly in bodies in water than on land; I have never seen it continue longer in a body than three days.

Defendant offered evidence tending to show the character of business Mr. and Mrs. McCann were engaged in in Chicago in 1902; that they were engaged in get-rich-quick concerns and matrimonial agencies, and that the matrimonial agency in St. Louis was a continuation of that business in Chicago and only removed to St. Louis, and that McCann was connected with it as well as Mrs. McCann; that in this business McCann made two or three hundred enemies who pursued him and wrote threatening letters to him, to show the probability of his being foully dealt with by some of these enemies; defendant also offered two affidavits for search warrants and a number of transcripts in criminal proceedings, issued on the 3d of September, 1902, against McCann and others. This evidence was objected to by the State and was excluded, to which the defendant excepted.

1854 Defendant also offered evidence tending to show the domestic relations of Mr. and Mrs. McCann, one witness testifying that on one occasion McCann slapped his wife and another that Mrs. McCann had a black eye just a few weeks before McCann disappeared, and that she had it at the time he disappeared. This witness, on cross-examination, stated that Mrs. McCann told her that her black eye was caused by being struck in the eye with a ball, thrown by a boy as she was crossing the street.

Other testimony offered by defendant tended to show that on the 17th of June, 1903, he was at Bonfils Station in company with McCann. Charles Nelson, a witness for defendant, testified substantially to the following state of facts: I reside at St. Charles, Missouri; about the 17th or 18th of June, 1903, I was working for the St. Louis, St. Charles and Western, about one-fourth of a mile from Bonfils Station; that was during the high water and there were watch ropes there to keep people from passing down the electric lines. I remember of having seen the defendant there about the 17th of June, 1903; it was the middle of the week; they were going on their way towards the ropes and I was at the station and they started down; there were two men; they started up the left-hand side of the track up from the overhead bridge at Bonfils, turned toward the right, and crossed the bridge and went toward the left, down where my station was supposed to be, down a quarter of a mile. As far as I can remember, the man who was with McCann was a heavy-set fellow, silk hat, Prince Albert coat, and a light pair of pants; he had a dark mustache; I couldn't say how big he was, I guess he was as big as the man with him, maybe a little bigger; they were standing there talking quite a while and I left and went down the track about twenty feet where the shed is, and when I came back the big man was gone and the other man was standing

by himself. I talked with the defendant quite a while after the big man was gone; I can't say how long he was gone. The defendant took to the left-hand side of the track, went over the bridge and
1855 went back down to the station. On cross-examination he stated: "I couldn't say which of the two men was the larger; I didn't pay that much attention; they were about the same size and build. I mean that the defendant wore a black Prince Albert coat and a light pair of pants. I never saw any cane. I don't know exactly when this was; think it was in June; it may have been a little bit earlier than the middle of the month. I went down to the shade tree and one of the men left; I didn't see which way he went. I didn't know but what the man who was with the defendant was some one he happened to meet out there and walked down the track with; they got off the car together, but didn't seem to have anything in common. A good many people were going down there at that time; getting off the car and looking at the high water." Defendant also offered evidence tending to show that late in the afternoon of the 18th of June, 1903, three strange men were seen near Bonfils quarry; that they had a horse and surrey. These men had fishing poles.

The defendant was a witness in his own behalf and denied having made many of the statements and admissions as testified to by Mrs. McCann, the Morrisons, and other witnesses. He testified in substance that on the afternoon of the 17th of June, 1903, he accompanied McCann to Bonfils, where McCann was to have met some men concerning a racing scheme, but failed to meet them; that after reaching Bonfils McCann left him and was gone about a half hour; that when they went to the drug store on the night of the 18th of June to get the headache powders, McCann talked over the telephone to someone, and then told the defendant that he was going to Bonfils to meet some parties and asked the defendant to go with him; that on the way out, missing the nine o'clock car at Wellston, they went to Suburban Garden, where the tintype picture was taken; that while at Suburban Garden the defendant loaned McCann $27.50; that they then returned to Wellston and boarded the ten o'clock car for Bonfils; that after getting on the car he suggested to McCann that
1856 it was too late to go out there that night and that they had better wait until the next day, but McCann said: "I have telephoned that I am coming and you had better go." That he sat down in the rear of the car and at first McCann sat by his side; that he told McCann he had a headache and didn't want to talk, and that he, McCann, then got up and took the seat in front of him; that McCann told the conductor and a passenger he was going out on business. Arriving at Bonfils, McCann preceded him off the car, and not finding the parties at the station as expected, they went up the path, McCann leading the way, to where the little path intersects Taussig avenue, defendant protesting against going further, saying, "Jim, let us go back, you had a fool's errand yesterday, we don't

want another at this late hour of the night;" that McCann told him to "come on, let us go down a little way." That they started south toward the quarry, and had not traveled far when they heard a low whistle toward the quarry and then came upon two men standing on the side of the road by a horse and buggy; that the larger man said to McCann, "You made a nice fool of me to-night, why didn't you come out?" That McCann replied, "We missed the car and have been out at the Suburban Garden." That McCann then took out a cigar and lit a match on the wheel, and that he saw the large man draw a pistol out of his hip pocket and put it in his front pants pocket; that the two men told them to get in the surrey, and that he called McCann to one side and told him about the pistol and that he didn't like the looks of things and wouldn't go any further; that McCann told him they were "lodge men" and it would be all right. The larger man, defendant thought, was a man whom he had seen talking with McCann a number of times at the Planters Hotel; that the two men insisted on the defendant getting in the surrey and that he refused; that McCann talked pretty rough to them, and told them, "if you think you are going to get the upper hand of me, you will be in hell's fire before long." That about that time de-
1857 fendant was knocked down; that he then heard a pistol shot and he got up on his feet again and ran into the bushes, these men pursuing him and McCann in turn pursuing them as though to defend him; that while running into the bushes he gave a loud outcry and asked McCann if he was going to let these men kill him, Barrington; that when he got into the bushes the men overtook him, and one of them knocked him down, and he remained unconscious until he was awakened by the rain about daybreak the next morning; that he only heard one shot. That when he woke up the next morning he found that his hat was gone, and that he found a straw hat on the ground which had a concave crease in it; that he picked it up and put it on; that it was not McCann's hat; that McCann's hat had a convex crease in it. He identified the cane offered in evidence and stated that he found it in the road the next morning and that it originally belonged to McCann, but had been given to defendant by McCann; that he was carrying the cane on this night, it having been handed to him by McCann when they got off the car at Bonfils, and that he dropped it when he received the first blow; that he looked around and found nothing else and started to walk to town; that the reason he walked to Wellston and then took the car was because he didn't know he had any change till at Wellston, when he found fifteen cents in a side pocket. He admitted that he had not told the truth to Mrs. McCann, but had told her the story of the Suburban Garden difficulty because he had been told by McCann never to tell Mrs. McCann what had happened when they were out together; that he thought McCann would be home in a few days and he didn't want Mrs. McCann to worry; this was also his explanation of the Mitchell letter. He denied knowing anything about the jewelry found on

the mud guard of the patrol wagon, and also denied that he ever shot Jim McCann or was in any manner implicated in killing him; that he saw the body, but did not know whether it was the body of McCann or not.

The State in rebuttal offered several witnesses, who testified that McCann was at home on the afternoon of the 17th of June, and that he slept all afternoon.

1858 This is a sufficient indication of the principle features of the testimony upon which this case was submitted to the jury to enable us to determine the legal propositions involved in the record. During the course of the opinion we will, in addition to this statement, refer to and discuss certain features of the testimony developed at the trial.

At the close of the evidence the court instructed the jury, and after argument of counsel the cause was submitted, and the jury returned their verdict, finding the defendant guilty of murder of the first degree as charged in the indictment. The instructions given by the court as well as those requested by the defendant and refused by the court, will be given due consideration in the course of the opinion; hence there is no necessity for their reproduction here.

Sentence and judgment was entered of record in accordance with the verdict of the jury. Motions for new trial and in arrest of judgment were timely filed, and taken up by the court and overruled. From the judgment in this cause the defendant, in proper form and in due time, prosecuted his appeal to this court, and the record is now before us for consideration.

OPINION.

The record before us presents numerous assignments of error on the part of the trial court, as a basis for the reversal of the judgment in this cause. We are confronted in this cause with a record disclosing one of the gravest charges of crime known to the law. Its im-

1859 portance and the serious results flowing from the judgment demand a most careful consideration of the propositions presented to us for review.

Learned counsel for appellant in their able presentation of this cause, have clearly indicated the legal propositions involved, as well as their views upon such propositions. We will treat the assignment of errors in the order suggested by the brief of counsel, and will give them such consideration as their importance merit and demand. The correct solution of them must at last be reached by a fair, reasonable, and impartial application of the law to the subjects and questions presented.

I.

It is insisted by appellant that the court erred in overruling the 7th ground assigned in the motion to quash the indictment. This ground in the motion to quash was, "Because the names of witnesses on the

part of the State are not endorsed on said indictment." The motion to quash was filed October 6th, 1903, and in support of this motion defendant states: "That the prosecuting attorney, at the time of the return of said indictment into court, and prior thereto, had knowledge of certain witnesses on the part of the State in this cause, and that said prosecuting attorney intentionally refrained from endorsing the name of one or more of said witnesses on said indictment, for the purpose and to the end that said witness or witnesses should be sprung as a surprise upon defendant in the trial of said cause, and so that defendant could not make adequate preparation to meet the evidence and testimony of said witness or witnesses. That the names and place of residence, identity, and whereabouts of said witness or witnesses are unknown to defendant, and that he is entitled, as a constitutional right, to know the name or names of said witness or witnesses, and to have his, her, or their names endorsed upon any indictment against him charging any crime concerning which they are to appear against him.

That defendant is a native citizen and subject of the King of Great Britain and Emperor of India, and as such is entitled, 1860 under and by virtue of the treaties now existing between the Government of the United States and Government of Great Britain, as well as under the laws and Constitution of the Federal Government, and also under the laws of nations to a fair and impartial trial of said cause, to be fully informed of the nature and cause of the accusation against him, and to know who are the witnesses against him in said cause, in order that he may have a fair trial thereof, and secure justice therein; and under said treaties, laws, and constitutional rights, as well as the laws of this State, defendant alleges this ground to quash the indictment." The court heard testimony upon this ground of the motion to quash, and the motion being submitted to the court, was overruled, and it is this action of the court of which appellant complains.

The evidence introduced by appellant upon this ground in the motion fails to disclose that the State purposely withheld the name of any witness from being endorsed upon the indictment. The witness to whom the principle complaint is addressed was Ada Mitchell, and the prosecuting attorney, who was called as a witness by the appellant, testified that at the time the indictment was returned that he knew nothing about the evidence that Mitchell would give, and that the names of all the witnesses who appeared before the grand jury were endorsed on the back of the indictment, and that all the witnesses that the prosecuting attorney knew of were subpœnaed before the grand jury, and they all appeared with the exception of two.

This complaint of appellant is predicated upon the provisions of section 2517, R. S., 1899, which requires the names of all the material witnesses to be endorsed upon the indictment, but it must be observed from the same section that such requirements was not intended to exclude the State from introducing other witnesses not endorsed

upon the indictment, for it is expressly provided, following the requirement to make the endorsement of all material witnesses,
1861 that other witnesses may be subpœnaed or sworn by the State, but no continuance shall be granted to the State on account of the absence of any witness whose name is not thus endorsed on the indictment, unless upon the affidavit of the prosecuting attorney, showing good cause for such continuance. In State v. Roy, 83 Mo., 268, there were no witnesses endorsed upon the indictment. The trial court sustained a motion to quash on that ground, which was affirmed by this court. In State v. O'Day, 89 Mo., the ruling announced in State v. Roy was approved, but it was clearly pointed out that under the provisions of the statute the State was not to be denied the right to introduce on the trial other witnesses than those whose names are endorsed upon the indictment, but that on the contrary, express license is given by the statute to do so, and in commenting upon the case of the State v. Roy, Judge Norton, who also wrote the opinion in the Roy case, said: "In the case of State v. Roy, supra, the indictment did not have upon it the endorsement of the name of a single witness. In the case now before us the indictment had endorsed upon it the names of three witnesses, and in such case the presumption can and must be indulged that the indictment was found upon their evidence, and that the grand jury, in making the endorsement, complied fully with the mandate of the statute."

This case has been cited with approval on this question in State v. Steifel, 166 Mo., 129, and State v. Nettles, 153 Mo. l. c., 469. Burgess, J., in the latter case, speaking for this court upon this subject, correctly and very clearly states the true rule. It was thus stated: "While the purpose of this statute is that the accused may know who his accusers are, and prepare to counteract their testimony, or to impeach or contradict them, if deemed necessary, it was not intended to deprive the State of the right to introduce witnesses other than those whose names are endorsed on the indictment, for it expressly provides that 'other witnesses may be subpoenaed or sworn by the State,' but at no time should the State be allowed to
1862 purposely refrain from endorsing the names of material witnesses on the back of the indictment, and then introduce them at the trial, and in this way take an undue advantage of the defendant." In State v. Steifel, supra, during the progress of the trial the State entered a nolle as to George Clevlen who had been jointly indicted in that cause with the defendant and introduced him as a witness on the part of the State. The same contention was urged in that case, that Clevlen's name was not endorsed on the indictment, and responding to the contention upon that state of facts, Gantt, J., speaking for this court, said: "The fact that Clevlen's name was not endorsed on the indictment did not render him incompetent. The statute requiring the names of all material witnesses to be endorsed on the indictment is a most just and humane provision. It is right that when a citizen's liberty or life is endangered that he should know the names of the witnesses by whom the charge is to be

made good. By so knowing he can prepare his defense. It may be necessary for him to impeach some of these witnesses. The State ought not to ask a conviction, unless it can be obtained fairly and upon testimony that will stand the severest tests known to the law. But, while this is true, it can not be said, that, if the State discovers evidence that the grand jury could not obtain, that the State shall not avail itself of this evidence if discovered before it closes its case. Indeed, section 4097 expressly reserves to the State the right to call witnesses other than those whose names are indorsed on the indictment." Citing State v. Roy, 83 Mo., 268; State v. Grady, 84 Mo., 220; State v. O'Day, 89 Mo., 559.

From these cases the correct rule as to the application of this statute may thus be stated: First. If there are no witnesses endorsed upon the indictment then upon motion, it should be quashed, unless the prosecuting attorney offers to supply such omission, then the defendant should have a reasonable time after such omission has been supplied to prepare his defense. Secondly. If the State should endorse some of the witnesses on the back of the indictment
1863 and then purposely refrain from endorsing the names of material witnesses on the back of the indictment, with a view of taking an undue advantage of the defendant, then the court would be warranted in promptly quashing the indictment or requiring the prosecuting attorney to supply such omission, and give the defendant a reasonable time in which to meet the testimony of such material witnesses. But by no means is it contemplated by this statute that the State shall be denied the right to introduce on the trial other witnesses than those whose names are endorsed on the indictment. Until the contrary is shown the presumption must be indulged that the indictment was predicated upon the witnesses endorsed upon it, and if the State, subsequent to the returning of the indictment discovers additional witnesses who are material, then, by express provisions of the statute it is contemplated that such witnesses may be subpoenaed and sworn by the State upon the trial of such indictment. Aside from all this it is manifest that the defendant has no right to complain of any prejudicial error upon the action of the court upon this motion. This motion was filed October 6, 1903, and the record discloses upon the showing made upon such motion and plea in abatement that appellant had notice of these additional witnesses which were introduced by the State at the trial. The trial did not occur until the 23rd of February, 1904, some three or four months subsequent to the time of which the record discloses that he had notice of these witnesses. We know of no rule of law or practice which would require the prosecuting attorney, upon the discovery of additional witnesses and as to the materiality of their testimony, to notify the defendant of the names of such witnesses and as to what their testimony would be upon the trial. There was no error in the action of the court overruling the motion to quash upon the 7th ground alleged as herein indicated.

II.

It is urged by appellant that the trial court committed
1864 error by permitting counsel for the State to cross-examine the defendant while on the stand upon matters and subjects not referred to in his examination in chief. This complaint, insisted upon by appellant, of error on the part of the trial court can only be fully appreciated and understood by a reproduction of such cross-examination just as it occurred in court. We will therefore be pardoned for burdening this opinion by inserting it here. It was as follows:

"Q. Where is your home?

A. England.

Q. At what place?

A. I decline to answer that.

Q. On what ground?

A. On the ground that I don't wish to inform my family of this. The disgrace is enough for me without my family being brought into it. I am not involving my mother and sister in this affair?

Q. That answer isn't sufficient in law?

A. For family and private reason are the only reasons I can give you, and they are the truthful ones.

Mr. GROVER. The witness can refuse to answer.

COURT. He has offered himself as a witness.

Mr. GROVER. Then we object to the question as irrelevant and immaterial.

A. I have already given a truthful answer to the question—simply private and family reasons.

Q. I ask you again, where is your home in England?

A. I decline to answer.

Q. What is your ground for refusing?

A. My ground is just what I have just stated.

COURT. The question is proper. The witness ought to answer.

A. I decline to answer any question that will involve my family, for private and personal reasons.

Mr. JOHNSTON. The State insists upon the witness being compelled to answer. The court has ruled on it.

COURT. Mr. Barrington, the ruling of the court is that the State is entitled to this. You offered yourself as a witness
1865 here, and the court should know and the jury should know what your residence is, in order to properly weigh your testimony and pass upon your credibility as a witness. Do you still refuse to answer?

A. I don't think it is right. It will involve my family. Part of the year I live in Brighton, and part in London, when in England.

Q. Where is your home in England?

A. I have answered. Part of the year in Brighton, and part in London, when in England. Many years I have been in India, away from England.

Q. When were you last in England?

Mr. GROVER. We object to that as irrelevant.

A. In 1902—the first month in 1902.

Q. Where were you living at that time in England?

Mr. GROVER. We object to that as irrelevant, immaterial, and not proper cross-examination.

COURT. Objection overruled.

(Formal exception by defendant.)

A. January, 1902, near Brighton.

Q. What place near Brighton?

Mr. GROVER. We object to that for the same reason.

COURT. Objection overruled.

A. I decline to answer that question. I am not involving my family in this matter at all. It has nothing to do with this. I decline to answer any questions that will involve my mother and sisters. It is a disgrace to be charged—I will bear the disgrace.

Q. Do you decline to answer that question? Where were you born?

A. India.

Q. When did you first come to the United States?

A. I have been in the United States twelve times altogether.

Q. When was the last time you came to the United States?

A. January, 1902.

1866 Mr. GROVER. We object to that as irrelevant, immaterial, and not proper cross-examination.

COURT. Objection overruled.

Q. What time?

A. January, 1902.

Q. Where did you land when you came here the last time?

A. Halifax, Nova Scotia.

Q. Were you in New York in that year?

Mr. GROVER. We object to that as irrelevant and immaterial and not proper cross-examination. Incompetent, because he is prisoner on the stand.

COURT. It goes to the credibility.

(Formal exception by defense.)

Q. I will ask you if in Brooklyn you were married under the name of Barton?

A. I never was. The only marriage I ever had in my life was with Wilhelmina Grace Cochrane, in St. Louis.

Q. You were never married in Brooklyn?

A. No, sir.

Q. Do you know Lieutenant Roby?

A. I do not. Lieutenant Roby does not exist—never has.

Q. Did you ever go under the name of Burgoyne?

A. I never did. I never went under any name except Frederick Seymour Barrington, or F. Augustus Seymour Barrington.

Q. What did you make this change for in traveling?

A. For family reasons. It is my private reasons. They are my own names.

Q. What has been your business in the past year or two?

Mr. GROVER. We object to that as irrelevant and incompetent, and not proper cross-examination.

COURT. Objection overruled.

(Formal exception by defense.)

A. I was sent down January 31st, or the beginning of February to the workhouse for marrying Grace Wilhelmina Cochrane. The mayor exhonorated me and I went with a man named Mr. Gillespie to manage that saloon on Broadway. From these I made an arrange-
ment with Mr. McCann to go to the Leland, and from the
1867 Leland I came to prison.

Q. What was your business the year before you went to the workhouse?

Mr. GROVER. We object. We object. We have had a fight over Mrs. McCann in Chicago.

COURT. I permitted you to ask her about Chicago. I didn't permit either of you to go into matters except their general reputation.

Mr. GROVER. Then your honor holds it is entirely a matter of impeachment.

COURT. Certainly. It has nothing to do with the case except as to the credibility of the witness.

Mr. GROVER. We object to it as incompetent, irrelevant, and immaterial and not the proper cross-examination. We object to it as incompetent, because it is the prisoner on the stand.

COURT. Objection overruled.

(Formal exception by defense.)

Mr. JOHNSTON. If he wants to avail himself of his constitutional privilege for fear of incriminating himself, that is a constitutional privilege.

Mr. GROVER. We object to that remark. We object to the State's making remarks of this kind.

COURT. You gentlemen don't refrain from making remarks—either side. You should not do so.

Q. Answer the question.

A. Part of the time with my sister in Ottawa. Part of the time in New York—a litle while in Philadelphia, then Washington, D. C. From Washington I came here; that was after the death of my youngest sister. My youngest sister died in Washington, October, 1902.

Q. The question was, What was your occupation?

A. I had sufficient time of my own. I had recently left the army, where I had been 13 years.

Q. When were you discharged?

1868 A. When I went to South Africa as war correspondent, in the month of October, 1899, when I left Bombay for Pt. Deborn, Colony of Natal. I arrived there in the month of November.

Q. What was your occupation when you came to St. Louis before you married Miss Cochrane?

Mr. GROVER. We object for the same reason.

COURT. Objection overruled.

(Formal exception by defense.)

A. Honest and honorable.

Q. We know that; what was it?

A. That involves other people, and that is the reason why I do not wish to answer it. I was making arrangements——

Q. The question was, what was it. Do you refuse to answer the question?

A. I will bring other people's names into it that I don't wish to bring into it, who hold honorable positions in both the United States and England.

Q. Was there anything dishonorable about it?

A. I don't want their names to get a reputation from this case. If you ask me that question when this case is settled, I will tell you.

Q. Will you answer that question?

A. It is a notoriety I should bring on other involving their names. I think other gentlemen in this court will understand that.

COURT. I rule the question as proper, but if he doesn't want to answer——

Mr. JOHNSTON. I ask him to answer. Do you refuse?

A. I decline to answer that question; I have other people's names——

Q. Well, the question still stand to be propounded later. When was it you arrived in St. Louis?

A. I think it was the 27th of December, 1902."

Upon this complaint the attorney-general insists that the ground of defendant's motion for a new trial—that is, that "the court erred in admitting illegal, irrelevant, incompetent, and immaterial testimony" does not cover or include the point of improper cross-examination of defendant. Upon this proposition we will say
1869 that if the objections at the trial were sufficiently specific to notify the trial court at the time of the nature and character of the objections and of the reasons for them, that the general assignment in the motion for new trial, that the court improperly admitted illegal, incompetent, and irrelevant testimony, would properly preserve the point of improper cross-examination for review in this court. There were but few proper and sufficient objections and exceptions in this cross-examination; there were, however, some of them sufficiently specific to disclose to the trial court the reason of the objection. The court is presumed to know that the defendant is on the stand when he is sworn, and an objection upon a question being propounded to the defendant, that it is irrelevant, immaterial, and not proper cross-examination, is sufficiently specific to preserve that point for review. Some of the objections to the cross-examination extended further and stated not only that it was not proper cross-examination, but that it was incompetent because he is a prisoner on the stand.

The cross-examination of a defendant is as much the eliciting of testimony in the trial of a cause as the cross-examination of any other witness, and if a specific objection is made to a question pro-

pounded to the defendant, on the ground that it is improper cross-examination, for the reason that he is the prisoner on the stand, and the court overrules the objection and admits the testimony, that testimony, if in fact the objection was well taken, should be regarded as illegal, incompetent, and irrelevant testimony, as much so as incompetent testimony from any other witness, and would be covered and included in the assignment of grounds in the motion for new trial, that the court had improperly admitted illegal, incompetent, and irrelevant evidence. State v. Noland, 111 Mo., 473.

Recurring to the cross-examination complained of, it is clear that the testimony sought to be elicited by such cross-examination had absolutely nothing to do with the cause on trial, and it
1870 is equally clear that the questions and answers propounded to the defendant upon such cross-examination were so manifestly unimportant and immaterial that defendant could not have possibly been injured by them. Analyzing this cross-examination it will be observed, as to the inquiry of the defendant as to where his home was, counsel made the objection, simply stating that it was irrelevant and immaterial. This objection, as has been repeatedly ruled by this court, was not sufficiently specific; but conceding, for the purposes of this case, that the objection was well made and overruled, the defendant answered that "he lived part of the year in Brighton and part in London, when in England. Many years I have been in India, away from England." There was no testimony introduced by the State contradicting the answers of the defendant, and we are unable to conceive how the mere statement as to where he lived could possibly have any tendency to injure the defendant in the trial of the case. The same objection was made to the question as to when he was last in England; he answered: "In 1902." Then follows the question, "Where were you living at that time in England?" For the first time counsel interposed an objection which is broad enough and sufficiently specific, that is, that it was irrelevant, immaterial, and not proper cross-examination. The question was answered that in January, 1902, he lived near Brighton. Again we might stop to inquire as to what effect and influence his answer to that question could have upon the jury—that he lived near Brighton? No one was introduced to contradict his statement. It was absolutely immaterial, and we are of the opinion had no tendency whatever to prejudice the defendant's rights or endanger in any way a fair and impartial trial. Upon further cross-examination, over the objection of counsel for defendant, he answered that he was born in India and had been in the United States twelve times altogether, and that he landed at Halifax, Nova Scotia, and that the last time he came to the United States was in January, 1902. What was said as to the former
1871 questions is equally applicable to these. We are unwilling to believe that any jury of the most ordinary intelligence would be influenced or prejudiced against the defendant by the mere statement that he was born in India, the number of times that he had been to the United States, and etc. Proceeding with the cross-examina-

tion it will be noted that the question was propounded as to whether he was in New York in that year—meaning the year 1902. There was an objection to this question and the record does not disclose that it was answered. Counsel for the State then proceeded along another line of cross-examination and inquired of the defendant if he was not married in Brooklyn under the name of Barton. To this question there was no objection whatever; defendant, however, answered that he never was, and that his only marriage was with Wilhelmina Grave Cochrane, in St. Louis. Then follows an inquiry as to whether he knew Lieutenant Roby, and as to whether or not he had ever gone under the name of Burgoyne. To these questions the record fails to disclose any objection. The defendant also answered that there was no such person as Lieutenant Roby, never had been, and that he had never gone under the name of Burgoyne, and stated that he never went under any name except Frederick Seymour Barrington or F. Augustus Seymour Barrington. Then follows the question to which the most serious complaint is urged by appellant. That was: "Q. What has been your business in the past year or two?" To this question there was a proper objection, but it will be noted that the defendant's answer was not responsive to the question propounded. The inquiry by the question was as to what his business was; his answer was that "he was sent down January 31st, or the beginning of February, to the workhouse for marrying Grace Wilhemina Cochrane; the mayor exonerated me, and I went with a man named Mr. Gillespie to manage that saloon on Broadway. From there I made arrangement with Mr. McCann to go to the Leland, and from the Leland I came to prison." We submit that this answer was not called for by the question propounded and is in no way respon-
1872 sive to it. Being sent to the workhouse and being sent to prison certainly is not to be regarded as a business, therefore such statement was simply a voluntary one by the defendant, about which he has no right to complain. The inquiry was never made of him by counsel for the State as to whether he had been sent to the workhouse for the commission of a misdemeanor; however, such inquiry—if he was convicted of a misdemeanor and sent to the workhouse—under the rule as announced by this court in pursuance to the provisions of section 4680, R. S., 1899, such inquiry, he having been introduced as a witness, could have properly been made. State v. Blitz, 171 Mo., 530; State v. Thornhill, 174 Mo., 364.

Counsel for appellant insist that the defendant does not fall within that class of witnesses contemplated by section 4680, supra, hence the inquiry can not properly be made of the defendant when on the stand as to his prior conviction of a criminal offense. A similar contention was urged in State v. Spivey, not yet officially reported, and responding to such contention this court said: "The right to make the inquiry sought by the question is predicated upon section 4680, which provides: 'Any person who has been convicted of a criminal offense is, notwithstanding, a competent witness; but the conviction may be proved to affect his credibility, either by the record or by his own

cross-examination, upon which he must answer any question relevant to that inquiry, and the party cross-examining shall not be concluded by his answer. The defendant, if he goes upon the stand as a witness, falls within the purview of that section. The purpose of that law was simply to avoid the necessity of introducing records of convictions, and we can see no harm that can be done a defendant. If he has never been convicted he can say so, and if he has been convicted of a criminal offense and testifies in a case, whether the question is propounded to him or not, as to whether or not he has ever been convicted, the State, for the purpose of discrediting his testimony,
1873 could introduce the record of his conviction. Hence we are unable to see what harm this statute, under the rules of evidence, does a defendant. * * * The effect of the enactment of section 4680, which is a later statute, is simply to add an exception to the provisions of section 2637, supra, in respect to the cross-examination of a defendant."

Proceeding further with the analysis of this cross-examination, defendant, in answer to a question as to his business, stated that part of the time he was with his sister in Ottowa, part of the time in New York, a little while in Philadelphia, then Washington, D. C. From Washington he came here; that was after the death of his youngest sister. His youngest sister died in Washington October, 1902. He further stated that he had been in the army thirteen years and was in South Africa as war correspondent in the month of October, 1899, and that his occupation after coming to St. Louis was honest and honorable, and that he arrived in St. Louis on the 27th of December, 1902. This closes the cross-examination which is complained of by appellant. We have read and reread such cross-examination and have given it most careful consideration, and while, as before indicated, the court should have promptly checked all of such inquiries we are unable to possibly conceive how such cross-examination could have the slightest tendency to prejudice the interests of the defendant or in any way endanger his rights to a fair and impartial consideration by the jury of the competent and relevant testimony introduced in this cause. His answers manifestly were favorable to himself, and the State in no way undertook to contradict them; hence, if the jury gave any consideration to such unimportant and immaterial cross-examination, the only presumption that can be indulged is that they accepted his statements, not being contradicted, as being true.

In order to warrant the reversal of a judgment on the ground of an improper cross-examination we take it that, giving the statute
1874 upon that subject a reasonable construction, such cross-examination must have some reference to matters material in the cause to which the defendant, as a witness, did not refer in his examination in chief; or, if immaterial, it must be along a line and upon subjects which would have a tendency to prejudice the jury against the defendant or his case. In State v. Avery, 113 Mo. l. c., 499, Burgess, J., speaking for this court, thus announced the rule, "The questions

asked the defendant in regard to statements made to Cracroft as to how deceased came to his death were, if at all material, not prejudicial to defendant, as his answers thereto were confirmatory of his statements in chief as to how the deceased did come to his death. There was not pretense that his answers to these questions were not true, and Cracroft was not put on the witness stand to contradict them. How, then, could defendant's case have been prejudiced thereby? He had stated as a witness that he was with deceased that night and that he shot himself. But we do not think these statements material, and can see no importance to be attached to them; they certainly had no effect whatever on the jury in their deliberations, and their admission is no ground for reversing the judgment." In State v. Lewis, 118 Mo. l.c., 86, the rule was thus tersely announced by this court: "In order to justify the reversal of the cause on the ground that the defendant was cross-examined with reference to matters to which he had not testified in his examination in chief, such cross-examination must have been in regard to some material matter, or something which had a tendency to prejudice the jury against the defendant or his case; and no such cross-examination was had in the case at bar."

The numerous cases to which our attention has been directed by learned counsel for appellant in support of his contention upon this cross-examination in no way conflict with the conclusions herein reached upon that proposition, nor with the cases cited in support of it. In State vs. Hathhorn, 166 Mo., 229, defendant was 1875 charged with having in his possession a forged deed. Testifying as a witness in his own behalf, the trial court permitted the State's counsel to inquire of him as to whether he had, prior to the time he took Judge Freshour's acknowledgment to the deed to Mrs. Hathorn, ever taken the acknowledgment of Judge Freshour to a deed to land of any kind, and this court said: "No testimony on that point had been elicited from defendant and, for like reason, defendant should not have been cross-examined as to whether defendant had ever before that time taken the acknowledgment of a deed of Judge Freshour's to which his wife, Mrs. Freshour, was not a party." It is manifest upon the charge upon which this defendant was being tried such cross-examination was improper. To the same effect is State v. Trott et al., 36 Mo. App., 29. It will be noted in that case that the defendants were charged with gambling, and while one of them was testifying in his own behalf State's counsel made the inquiry if he ever played cards before for money. Before his counsel could object the defendant answered in the affirmative, "yes." Objection was then made to the question, which the court sustained, and the jury was instructed not to consider it as evidence. This error was one of the grounds upon which the case was reversed, and properly so, for in that case the cross-examination was upon a material matter not referred to by the defendant in his examination in chief and manifestly had a tendency to influence the jury in the trial of the cause, and thereby prejudice the rights of the defendant. Upon the question

being propounded and answered the error in that cross-examination became complete and was in violation of the express provisions of the statute, and the subsequent action of the court in excluding the evidence from the jury was insufficient to cure the error of such cross-examination and relieve it of its injurious effects. The same may be said of State vs. Graves, 95 Mo., 510. The defendant in that case was charged with larceny, and the court, indicating the character
1876 of cross-examination which would warrant a reversal of the judgment, said that if the defendant had been asked where he was on the night that the larceny was committed, or had been asked "Were you at a certain point on the night of the larceny," and over his objection he was compelled to answer such question, it would constitute reversable error. That is true, and it is apparent that that sort of a cross-examination was upon matters very material in the cause. The whereabouts of the defendant on the night of the commission of the larceny with which he is charged and is upon trial was certainly an inquiry concerning a very material matter in connection with the commission of the crime. That is not this case. Here we have a line of cross-examination upon matters entirely foreign to the matter in issue. As indicated by the cross-examination, it has no reference to the time or place of the commission of this homicide, and we simply repeat in conclusion upon this proposition that we are unable to conceive how such a cross-examination could operate to the prejudice of the defendant in the trial of this cause, and we are unwilling to believe that such cross-examination in any manner whatever influenced the jury in reaching their final conclusion and verdict as returned.

III.

Appellant earnestly insists that the trial court committed error in its action overruling his application for a change of venue. The application of the defendant for a change of venue in this cause was predicated upon the alleged prejudice of the inhabitants of the circuit and county. The State joined issue with the defendant upon the facts alleged in his application and the court heard testimony of a number of witnesses, about forty-one witnesses testifying in support of the application, and about thirty-seven were introduced by the State in rebuttal of the showing made by the defendant.

We have in the statement of this case, upon the hearing
1877 of this application, indicated the nature, character, and tendency of the proof offered by both the defendant and the State; hence the correct solution of this proposition must be sought in the application of the rules of law applicable to this subject to the facts as herein indicated. The defendant's right to have his case removed from the county and circuit in which it was pending is purely statutory. State v. Lanahan, 144 Mo., 31; State v. Thompson, 141 Mo., 408; State v. Sanders, 106 Mo., 188; State ex rel. v. Wofford, 119 Mo., 408.

It is made manifest from the disclosures of the record in this cause that the right of the defendant to a change of venue upon the facts alleged were most seriously and earnestly contested by the State. The record discloses an immense volume of testimony introduced by both sides upon the hearing of the application. In State v. Wilson, 85 Mo. l. c. 139, the law as applicable to this subject was, by Sherwood, J., speaking for this court, thus tersely stated: "Regarding the application for a change of venue, it was based upon the ground of the prejudice of the inhabitants of the county against the defendant. On this point witnesses were heard pro and con, and the decision of the trial court was final thereon, unless some abuse of judicial discretion was shown." Citing State v. Wilson, 68 Mo., 91, and cases cited. The law is nowhere more correctly and clearly stated than it is in Bishop's New Criminal Procedure, Vol. 1, 4th Ed., page 72. The rule is there announced as follows: "The discretion is judicial, not personal in the individual judge. The course of the courts in our States differs as to reviewing, in a higher court, a judicial discretion exercised in a lower. There are States in which the higher tribunal will rarely or never interfere in this matter of changing the venue; but the better and more common doctrine is, that the decision of the lower court will be corrected in extreme cases of abuse, and in no other." It is now the well-settled
1878 rule of law in this State that the granting of a change of venue in a criminal case rests largely in the discretion of the trial court, and where the trial court has heard the evidence in favor of and against the application and a conclusion reached adversely to granting the change, such ruling will not be disturbed by this court, and should not be unless there are circumstances of such a nature as indicates an abuse of the discretion lodged in such court. State v. Clevenger, 156 Mo., 190; State v. Albright, 144 Mo., 638 State v. Tetlow, 136 Mo., 678; State v. Dire, 139 Mo., 199. The reason of this rule is well stated in the text in Ency. of Plead. and Prac., vol. 4, page 499. It is thus stated: "Where the lower court is vested with a discretion to grant or refuse a change of the place of trial, its action will not be reviewed unless there has been an abuse of the discretion. The reason for this rule is obvious. Whether a change of venue is necessary to obtain a fair and impartial trial is not a question of law, but of fact. A judge on the spot, viewing all the circumstances, and having knowledge of persons, facts, and influences, is much better qualified than is an appellate court at a distance, with only ex parte affidavits before it, to determine the fact whether or not it is true that the defendant can not have a fair trial by an impartial jury in the county in which he is indicted, or in which the plaintiff has commenced his suit." Applying the rules thus deduced from the authorities herein indicated to the facts as shown upon the hearing of this application, we are then confronted with the simple question as to whether or not there is disclosed by the record in this cause circumstances of such a nature as indicates

an abuse of the discretion of the trial court in denying appellant's application for a change of venue. Upon this proposition, it is sufficient to say that after a most careful scrutiny of the record upon the hearing of the application for a change of venue, we fail to find any disclosures in such record which would warrant this
1879 court in holding that there was an abuse of discretion by the trial court in denying appellant's application for a change of venue. There is an entire absence of any indication in this voluminous record of any feeling or prejudice on the part of the trial judge against the defendant; in fact, it may be noted that in order that a full and exhaustive hearing might be afforded the defendant upon his application, the court refused to fix any limit as to the number of witnesses to be introduced. The presiding judge of that court resides in St. Louis County, and doubtless was personally acquainted with a number of the witnesses who testified upon this hearing; at least he had the witnesses before him; saw them, with opportunities for judging of their credibility and the weight to be attached to their testimony that are not afforded the appellate court; and we are unable to point out in this record any circumstances in the least indicating an abuse of discretion. It may also be added that the record does not disclose that the officers were burdened with any serious or extraordinary trouble in securing the panel of qualified jurors. The county of St. Louis has a population of fifty thousand or more, and we are unable to assent to the contention of appellant, under the testimony as disclosed upon the hearing that he could not get an impartial jury and have a fair trial in that county.

Counsel for appellant earnestly insist that the inflam'ïtory articles in the metropolitan press of the city of St. Louis, denouncing the defendant and theatrical performances in which the defendant was impersonated by one of the characters, had a strong tendency to prejudice the people of the county and thereby endanger a fair and impartial trial. It is but common knowledge that the press complained of has a wide circulation in nearly every county in the State, and the same reason urged against St. Louis County could be made applicable to most any other county in the State as well as the county in which the defendant was tried. While St. Louis County is adjacent to the city of St. Louis, with the modern facilities for rapid transit,
1880 the people throughout the State are about as readily informed of the news by such press as the people in the county where this trial occurred. In the case of State v. Goddard, 145 Mo., 177, upon which appellant chiefly relies for support of his contention upon this proposition, is by no means a parallel case. It will be observed in that case that the showing was all one way. The defendant introduced about 16 conceded reputable citizens of Kansas City who testified in support of the application for a change of venue. The State offered no evidence whatever in rebuttal of such showing. This court very properly held that as the prosecuting attorney offered no evidence in rebuttal that his action in that respect was tantamount to a demurrer to the evidence, and as the defendant had made out a prima

facie case the change should have been awarded. Our attention is also specially directed to the case of State v. Ridspeth, 150 Mo., 12. The discussion in that case applicable to the proposition now in hand falls far short of giving any support to the contention of the appellant. The rule was simply announced, as it had been previously announced in the Goddard case, that where the defendant makes out a prima facie case of prejudice of the inhabitants of the county against him, and his witnesses are not impeached either by cross-examination or by evidence aliunde or direct impeachment of their veracity, and the State offers no rebuttal, he is entitled to a change of venue. But proceeding with the discussion the court very clearly announced the rule applicable to this proposition, and said that "it has been uniformly held that the trial judges have peculiar advantages in weighing the evidence in these cases, and their findings are not to be interfered with unless it appears they have abused their discretion." In that case, as in this one, newspaper clippings were offered in evidence, and this court, in the course of the opinion as to such evidence, used the following language and thus announced its final conclusion upon the question before it: "Various news-
1881 paper clippings from the Star and World, newspapers, giving various versions of the homicide, criticising the courts, grand jurors, and jurors generally, were read, a practice well designed to promote changes of venue. We have carefully considered them and find they are not materially different from the usual comments in such cases."

The ruling upon this complaint of error must be adverse to the appellant.

IV.

On Monday, February 8th, 1904, the trial court ordered of its own motion that a venire for a special jury of 76 men be issued and directed to the sheriff of the county of St. Louis, and made returnable on Tuesday, February 23, 1904, at 9.30 o'clock. Appellant insists that he nor his counsel were not present in court when this order for a special venire was made and asserts that the court committed error in overruling his motion to quash the venire which was filed, on the ground of the absence of the defendant and his counsel at the time the order was made for it, and also committed error in the denial of the challenge to the array.

Upon this complaint of error the record discloses that neither the motion to quash the venire or challenge to the array was supported by affidavit or any other evidence. Section 2610, R. S. 1899, provides that "no person indicted for a felony can be tried unless he be personally present during the trial. The same section also contains the following: "And provided further, that when the record in the appellate court shows that the defendant was present at the commencement or any other stage of the trial, it shall be presumed, in the absence of all evidence in the record to the contrary, that he was

present during the whole trial." The record in this cause discloses that upon October 6, 1903, defendant filed a motion to quash the indictment, which was by the court overruled. On November 7, 1903, the defendant filed a demurrer to the indictment, which on the same day was overruled, and on the last-named date defendant filed a plea in abatement, which was overruled by the court and the de-

fendant on that date was formally arraigned and entered a
1882 plea of not guilty. On December 24, 1903, the defendant filed an applicatioin for a citation for contempt against certain parties, and a second application for a similar citation on the 28th of December, 1903, on which last-named date the court, after hearing evidence thereon ordered that said application be denied. On January 7, 1904, the defendant filed his application for a change of venue on the ground of the prejudice of the inhabitants of the county, which application, after hearing the evidence thereon, was by the court overruled, and the cause set for trial February 23, 1904. On February 8th, the order that a venire for a jury issue was made, which is here complained of.

There was no merit in appellant's motion to quash or the challenge to the array of jurors as returned by the sheriff. It is sufficient to say upon this proposition that if the term trial as used in sec. 2610, supra, means an adjudication of the case upon its merits, which is suggested by counsel for appellant in their reply brief, then the order of the court authorizing the sheriff to summon a jury to be present at some subsequent date fixed for the trial of the cause was a mere administrative function performed by the court preparatory to the trial, and in no sense a part of the trial of the cause, and the presence of the defendant was in no way essential to the valid exercise of such function nor to the validity of the order so made.

It may be said, as was ruled in Osborne v. State (24 Ark., 629), that the phrase during the trial means every substantive step taken by the court in the cause after the indictment is presented by the grand jury to the court up to and including the final judgment; yet it is apparent that each step taken in the cause does not constitute a separate and distinct trial, but is only a step and part of the prosecution, which, together with the final adjudication of the case upon its merits, constitutes the trial contemplated by the statute.

In the first place, the order for the jury complained of, in our opinion, does not constitute such substative step in the cause
1883 as renders it a part of the trial and makes the presence of the defendant essential.

In the second place, if it is to be considered as a part of the trial, then the arraignment and plea of not guilty must also be treated as a part of it, and the record, prior to this order for a jury, disclosing that defendant was present at the time of the arraignment, and in the absence of all evidence to the contrary, in accordance with the express provisions of the statute, he is presumed to have been present during the whole trial.

In State v. Montgomery (63 Mo. l. c. 299) it was said by this court that the arraignment and the prisoner's plea must be the first step in the progress of the trial. Aside from all this, upon the return of the panel of jurors as ordered by the court, defendant was afforded ample opportunity to present any and all objections to the manner and method of summoning such jurors and to any improper conduct on the part of the officers in summoning them, as well as any other complaint he desired to urge against the array; however, he simply contented himself with a motion to quash and challenge to the array, on the simple ground that he was not present at the time the order that a venire issue was made. As to that, as heretofore stated, there was no evidence to support it, and was without merit, and the record does not disclose any harm or injury done the defendant.

V.

Appellant complains of remarks of the assisting prosecuting attorney in his opening argument to the jury. The language used by the counsel for the State, and now complained of as reversible error, was as follows: "In all candor and with due reverence, I wish to confess to you that during the progress of this trial my conception of the devil has been materially changed. And I were to portray him to you now, I would not paint him as hoofed and horned, lurid with purgatorial fires, but rather would I picture him to you as arrayed in white vest and Prince Albert coat, with a voice as soft as the breath of summer, and with a steel gray eye." At the same time said attorney pointed with his hand across the counsel table towards the defendant, who sat there, dressed in a white vest and Prince Albert coat. The court thereupon immediately said to Mr. Gardner,
1884 in the presence and hearing of the jury, "Mr. Gardner, that is not proper argument."

The state is best represented by counsel who confines himself to a discussion of the facts of the case developed at the trial, and this court has repeatedly condemned personal abuse of the defendant upon trial. We confess that the remarks of counsel, even though clothed in choice and select terms, would have been better left unsaid; however, the trial court very promptly rebuked him and said in the presence of the jury, calling the counsel by name, that it was improper argument; and we are of the opinion that the language used was not of that low order of abuse and denunciation of defendant as indicated in the decisions which this court has held prejudicial error. This being true, and the court having promptly rebuked counsel, in our opinion, such remarks should not be held as reversible error. It is also complained that the counsel for the State in his argument to the jury referred to the defendant's conduct as showing "reptilian sagacity."

There was no error in these remarks. They amounted to nothing more, except in a different form, than saying, as suggested by the attorney-general, that the defendant, in explaining the damaging

circumstances shown against him, was as "wise as a serpent." The court also very promptly rebuked counsel for even making these remarks and emphatically told counsel in the presence and hearing of the jury that it was improper and that he must not repeat such language. This was not such personal abuse of the defendant as indicated in the cases cited in the brief of counsel as would warrant this court in reversing the judgment.

VI.

1885 Appellant assigns as error in his motion for new trial the misconduct of one of the jurors. In support of this assignment in the motion, the affidavit of Jno. R. Bennett was filed, in which the affiant states that during a recess in the trial of said cause one of the jurors, who was in the jury room on the second floor of the court-house, leaned out of the window of said room and talked to some man on the sidewalk in the court-house yard.

Upon this assignment of error it will suffice to say that the record fails to disclose at what time the knowledge of such misconduct complained of came to appellant or his counsel. This is fatal to the contention urged by appellant upon this proposition. In Ency. Plead. & Practice, vol. 12, page 558, the rule of practice upon this subject is thus announced: "When a party moves for a new trial on the ground of misconduct which occurred during the trial, he must aver and show affirmatively that both he and his counsel were ignorant of the misconduct charged until after the trial."

In support of the rule above announced we have the case of State *v.* Robinson, 117 Mo., 649. It was there said by Sherwood, J., speaking for this court, that "where misbehavior of a juror is charged as having occurred during the trial, it must affirmatively appear that the party complaining thereof did not know of the fact before the jury retired to consider of their verdict. 2 Thompson on Trials, sec. 2620, and cases cited. This material fact is not disclosed in the affidavit filed, and the statement of it in the motion for a new trial is no evidence of its existence, as all our authorities show. If the complaining party knew during the trial of such misbehavior it was his duty to call immediate attention of the court to it, and not take his chances of a reversal based on such ground." It was ruled in State *v.* Hunt, 141 Mo., 626, involving a similar principle, to the subject now under discussion, that it was essential that the defendant and his counsel also make affidavit as to the facts alleged, in respect to the misconduct of jurymen, which is made the basis of one
1886 of the grounds for a motion for new trial. To the same effect is State *v.* Howard, 118 Mo., 127; State *v.* Burns, 85 Mo., 47.

VII.

There is no merit whatever in the complaint of appellant to the action of the trial court in overruling defendant's plea in abatement. This plea in abatement was based upon the same ground of failure to

endorse the names of witnesses as had been previously alleged as a ground in the motion to quash the indictment; the difference being in the motion to quash there was a prayer that the indictment be quashed for such failure, and in the plea in abatement there was no prayer at all. Upon the motion to quash the indictment for the same reason as alleged in the plea in abatement, the court heard the testimony as introduced by the defendant and overruled the motion.

We have heretofore fully discussed that proposition, and are of the opinion that the grounds alleged can not be made the basis of a plea in abatement. There was no issue of fact as contemplated by the statute, to be submitted to a jury. Even if the facts as alleged in the plea in abatement were true, it does not necessarily follow that the indictment would be abated. The facts in contemplation of law which are to be submitted to a jury upon the trial of a plea in abatement, are such a state of facts, if found to exist, that the court must, by a proper order, abate the indictment. The ground as alleged in the plea in abatement was that the prosecuting attorney at the time of the return of the indictment and prior thereto, had knowledge of the names of material witnesses, which he intentionally refrained from endorsing on the indictment for the purpose of springing such witnesses at the trial as a surprise on the defendant, etc. As before stated, that question was fully heard upon the motion to quash—but for the purposes of this case, concede that to be true, then it was a question for the court to determine whether or not the indict-
1887 ment should be quashed or the prosecuting attorney required to endorse the names of such witnesses upon the indictment and give the defendant a reasonable time in which to prepare for his trial with such new witnesses so endorsed. In addition to this, it will be observed that sec. 2517, R. S., 1899, does not in terms impose the duty of making the endorsement of witnesses upon the indictment upon the prosecuting attorney. It is simply provided that upon the finding of an indictment by the grand jury, the name of the material witnesses must be endorsed. While this duty is ordinarily performed by the prosecuting attorney, it is not done by any command of the statute, and as the grand jury are required to have the witnesses before them, hear the evidence, and predicate their finding upon it, the presumption is that they know better than anyone else the material witnesses upon whose testimony they based their action; it is, therefore, clearly within the reasonable contemplation of sec. 2517 that they make the endorsements of the witnesses or that it be done under their direction. The correctness of the conclusions herein reached, that this plea in abatement did not present any issue of fact which should be submitted to a jury, is emphasized by the action of the learned counsel for appellant in submitting it to the court without any request for a jury. The court had passed upon the same facts upon the motion to quash the indictment. This plea in abatement was submitted upon the same facts as offered in evidence upon the motion to quash, and it is apparent that counsel did not regard it as a question to be submitted to the jury, otherwise they

would have made such request of the court. The action of the court in overruling this plea in abatement was proper, and upon this assignment of error the ruling must be adverse to appellant.

VIII.

Appellant complains at the action of the trial court in giving instruction No. 8, authorizing the conviction of the defendant if the jury found that he killed McCann in the perpetration of a robbery.

1888 It will be noted that the indictment in this cause contains five counts, charging the homicide in different forms; the first charged murder by shooting; the second, murder by drowning; the third, murder by shooting and drowning; the fourth, murder by unknown means, and the fifth, murder in the perpetration of a robbery. Before the jury was sworn the prosecuting attorney, with the permission of the court, entered a nolle prosequi as to the fifth count of the indictment, and the fourth count was taken from the jury by an appropriate instruction.

1889 Counsel for appellant frankly concede in their brief that under the first, second, or third counts, if they are good, it would be competent to prove a murder by robbery if a special count had not been added. However, the contention is urged that the adding of the special count, charging murder in the perpetration of a robbery and the dismissal of it by the State, was an abandonment of that feature of the case that the murder was committed in the perpetration of a robbery; hence no proof should have been admitted along that line, and it was error to submit that feature of the case upon the instruction.

It is only necessary to state upon this proposition that when the State dismissed the fifth count in the indictment, the case presented was then one simply as though no such count had ever been presented in the indictment. This being true, the State had the right, under the remaining counts upon which the defendant was tried, to introduce proof of the commission of the offense in the perpetration of a robbery, and the court very properly gave instruction number 8, which is here complained of. The action of the court in giving this instruction finds ample support in State v. Meyers, 99 Mo., 107; State v. Foster, 136 Mo., 653; Kelley's Criminal Law and Practice, page 321.

IX.

Appellant insists that the court committed error in excluding the evidence of witness, Clifton R. Wooldridge. It was sought to elicit from this witness testimony which tended to prove that the matrimonial bureau of Mrs. McCann in St. Louis, was but a continuation of a similar illicit and fraudulent business which she and McCann had together engaged in in Chicago, and on account of which business the alleged deceased had many enemies, some of whom wrote him

letters threatening personal violence. Defendant further sought to show by this witness that McCann was engaged in a fraudu-
1890 lent turf business in Chicago and a get-rich-quick scheme by which he made many enemies, and that the deceased was a man who had borne many names and was connected with many frauds, and thereby made many enemies who threatened him injury. This testimony was excluded by the court and we are of the opinion properly so. It had no tendency to prove or disprove any of the issues involved in this case.

In State v. Crawford, 99 Mo., 74, defendant was charged upon indictment with the offense of arson. The testimony upon which the judgment of conviction rested in that case was largely circumstantial, and the defendant there, as the defendant in this cause, offered to show that threats had been made against the person and property of the prosecuting witness. This court, speaking through Sherwood, J., said upon the subject of the admissibility of such testimony that "there was no error committed in refusing to allow evidence to be adduced for the purpose of showing whether one Hogg had not made threats against the person and property of witness, whose storehouse was burned. Such threats were wholly foreign to the case; res inter alios—and consequently had no bearing on the guilt of the accused." Best's evid. (Chamberlayne), 489; Starkie, Ev. (9th ed.), pp. 36, 61, 82, et seq. To the same effect is State v. Taylor, 136 Mo., 66. The defendant in that case was charged with burglary and larceny and this court, upon the proposition of the admissibility of evidence of a similar character to that sought to be elicited from witness Wooldridge said that "the offer of defendant to prove that Jim Baker, the blacksmith, had made a key which would fit and unlock the store in question, and that he intended to burglarize it, was properly rejected. Mere threats by third persons to commit the crime charged against the accused, or the confessions of such persons in open court that they had committed such crime, is wholly inadmissible in defense of the party on trial, because such matters are purely hearsay." Citing State v. Duncan, 6 Ire 236; State v. May, 4 Dev., 332, et seq; State v. Patrick, 3 Jones (N. C.), Law, 443.

1891 The rule, as announced upon this proposition by this court, has full support by similar rulings in courts of high standing in other States. In State v. Crookham, 5 W. Va., 510, it was ruled that prior threats to kill and subsequent immediate flight of a third person were properly excluded as not pertinent. In Buell v. State, 104 Wis., 132, it was also held that threats of third persons to kill the deceased were incompetent. In State v. D'Angelo, 9 La. An., 46, it was held that testimony showing that deceased had innumerable enemies was incompetent on the ground that it was too vague and uncertain.

X.

Appellant very earnestly insists that the court committed error in the admission of Asa Mitchell's testimony and the copy of the letter as identified by the witness.

Mitchell at the trial testified that the defendant on the 22nd of June, 1903, which was three or four days after it is alleged that the defendant killed the deceased, McCann, came to his office in the Mermod-Jaccard building in the morning about 10.30, and that the defendant detailed a difficulty that McCann had gotten into out at the Suburban Garden, and that McCann was in such a condition that he didn't dare go home, and said that McCann was in a house on Chestnut street and would return in a day or so, as soon as his face got better, and that the defendant expressed the wish to him that some one would write a letter to him to show to Mrs. McCann so that she wouldn't worry so much. The witness suggested that he would write a letter, and when this suggestion was made the defendant sat down and wrote a letter in lead pencil and Mitchell copied it in pen and ink. The letter was as follows:

JUNE *22, 1906.*

"FRED: Can't return just yet; am in safe hands and getting better. Never mind sending what I asked you, have enough for present needs. Take care of Jessie and don't let her worry. Look 1892 after the house and do all I told you to do. Keep your promise and I will keep mine.

"E. M. for JIM."

After some inquiry about envelopes, the letter as written by Mitchell, was handed to the defendant, and the testimony tended to show that the defendant took it to the telegraph office and directed that it be addressed and sent to him at the Leland Hotel by a messenger. The letter was received at the hotel and read by Mrs. McCann, and delivered by her to Chief Desmond. Desmond, in securing a statement from Mitchell, made a copy of the letter and gave the original letter to Detective Kiely, who delivered the same to Sheriff Hencken. The loss or destruction of the original letter given to Hencken, in whose custody it was placed, was sufficiently shown. The copy of the letter as made by Desmond was shown to witness Mitchell, and he stated positively that it was an exact copy of the letter that he wrote and handed to the defendant in the Mermod-Jaccard building. We think it is clear upon this showing that after sufficient proof of the loss or destruction of the letter written by Mitchell at the suggestion of the defendant had been introduced, that the State had the right to prove the contents of that letter; and it can make no difference whether such contents is proven by the mere statements of the witness as to what the letter contained or by the introduction of a copy of the letter which is identified by the witness as in this case, as being an exact copy of the letter the contents of which is sought to be proven. Either mode of proof of the contents of the lost letter is but secondary evidence, and we can see no valid objection, the witness fully identifying the copy of the letter, to its being read in evidence. To illustrate this proposition, supposing there was no copy of the letter and it was lost or destroyed, and the witness while

on the stand, after proper proof of the loss of the instrument, instead of merely stating as to what the contents of the letter was, should take a pencil or pen and ink and reduce to writing its contents and then read it to the jury, and say this is the contents of the
1893 letter, would it for a moment be held that the mere reducing the contents of the letter to writing by the witness and reading it to the jury would be anything different than the proving of the contents in the original way? We think not. The rule is announced by some of the authors on the subject of evidence that the party offering to prove the contents of an unavailable written document, must offer a copy if he has one in his control, in preference to recollection testimony. (Wigmore on Evidence, vol. 2, 1538.) But aside from all this we are unable to comprehend how the defendant is in a position to complain about this letter when the record discloses that in his own testimony he practically identifies it himself. Upon this subject the defendant in substance stated: "Mitchell was my friend, and Mrs. McCann I saw was grieving. I was sorry to see her, and I told Mitchell about it and he says, I guess we can fix it up, and suggested to write this letter, as he has voluntarily stated, and I consented to it for the simple reason I couldn't bear to see that woman fretting, and I expected him to return home in a few days."

It will be observed that the copy of the letter had been introduced by the State and that the defendant in his testimony refers to it as "this letter," and that he consented to it for the simple reason that he could not bear to see the woman fretting. This testimony was clearly competent and relative in this cause and very damaging to the defendant by reason of its strong tendency towards establishing the fact that he was endeavoring to conceal the offense for which he was afterwards arrested, tried, and convicted.

XI.

There is no merit in assignments of error under paragraphs 11 and 12 of appellant's brief. They simply complain of the weeping of Mrs. McCann during the argument of the case and the excluding of the subpœnas of witnesses before the grand jury on the hearing of the motion to quash the indictment and plea in abatement. We shall not burden this opinion with any discussion of these propositions.

1894

XII.

Appellant complains of instruction No. 7 given by the court in this cause. It is sufficient to state upon this complaint that the instruction challenged has repeatedly met the approval of this court. In State v. Thomas, 78 Mo., 327, this instruction was given, and, in commenting upon the instruction, this court said: "The instructions prepared by the court of its own motion are exceptionally good." In the recent case of State v. Cushenberry, 157 Mo., 168, it was again given by the trial court and expressly approved by this court. The

appellant, however, complains that the terms "without just cause or provocation," being used in the instruction, should have been defined. There was no necessity for such definition. The court in defining deliberation in instruction No. 6, which fully stated the character and nature of a provocation which would reduce the killing from murder in the first degree. The court said in that instruction that "any such provocation by improper conduct of the deceased towards the defendant of such a nature as to cause the defendant to be so far under the dominion of sudden passion in consequence thereof as to be unable to judge rightly as to the nature, quality, and consequence of his acts, or to materially impede or interfere with such judgment, would take away deliberation and prevent a cool state of the blood." This clearly was a sufficient defining of the term provocation.

Appellant also complains of instruction No. 6 defining deliberation. This instruction was as follows: "Deliberation means done in a cool state of the blood, not in sudden passion, engendered by some just or reasonable cause of provocation. It does not mean brooded over or reflected upon for a week or a day or an hour; but it means an intent to kill executed by the defendant in a cool state of the blood in a furtherance of a formed design to gratify a feeling of revenge or to accomplish some other unlawful purpose, and not under a violent passion suddenly aroused by some provocation. Any 1895 such provocation by improper conduct of the deceased towards the defendant of such a nature as to cause the defendant to be so far under the dominion of sudden passion in consequence thereof as to be unable to judge rightly as to the nature, quality, and consequences of his acts, or to materially impede or interfere with such judgment, would take away deliberation and prevent a cool state of the blood."

The complaint as to this instruction is practically directed to the failure of the court to define improper conduct. Improper conduct has no technical meaning, and if there is any criticism of this instruction it is because it is too favorable to the defendant in using the broad language of improper conduct. Moreover, we might stop to inquire as to what reason the appellant has to complain of the failure of the court to instruct upon the subject of provocation or as to what would constitute provocation, or its failure to define heat of passion or improper conduct. The defendant makes no claim that he killed McCann by reason of any provocation, or that he was in the heat of passion at the time he killed him. His defense is absolutely that he did not kill him at all. While it may be true that if the testimony as introduced by the State indicated such a state of facts surrounding the transaction as would tend to show that the killing was done in a heat of passion by reason of improper conduct on the part of the deceased, that the court should instruct upon murder in the second degree or manslaughter in the fourth degree, even though the defendant might deny absolutely that he did the killing, but the record in this case does not disclose any such state of facts, and we are of the

opinion, guided by the disclosures of the record, that this was murder of the first degree or it was nothing.

Instruction No. 14 is complained of, which is as follows: "If you believe and find from the evidence that it fails to show any motive on the part of the defendant to commit the crime charged against him, then this is a circumstance in favor of his innocence which you ought to consider in connection with all the other evidence
1896 in making up your verdict. And in order to ascertain a motive you should take into consideration all the evidence in reference to the associations and relations between the said James P. McCann and the defendant, and their deportment toward each other, together with their surroundings and all the other evidence in the case. But if, upon consideration of all the evidence, you believe and find that the defendant has committed the crime charged, then you should find him guilty, no matter whether any motive for the deed be apparent or not."

In treating this complaint it is sufficient to repeat what was said in case of State v. David, 131 Mo., 380, that "the motives for crime are so numerous, so hidden, and often so utterly unreasonable that it is impracticable to require that they shall always be made manifest." The instruction complained of is substantially in the form as given in State v. David, supra, and State v. Henderson, 186 Mo., 473, and was expressly approved by this court.

Instruction No. 15 complained of is one that has repeatedly been in judgment before this court. It undertook to direct the jury in respect to the consideration of statements made by the defendant prior to his arrest. It is unnecessary to discuss this instruction or to reproduce it in this case. It is sufficient to say as to this instruction that it has been approved by a uniform and unbroken line of decisions by this court. State v. Coats, 174 Mo., 1.5, 416; State v. Howell, 117 Mo., 323; State vs. Duestrow, 137 Mo., 44; State v. Talbott, 347; State v. Hollenscheit, 61 Mo., 302, and numerous other cases.

Appellant complains of instruction No. 5, which substantially told the jury that if the defendant killed McCann without deliberation that it was second-degree murder. The complaint to this instruction is directed to the failure of the court to define the "other" kinds of murder in the second degree than that in the heat of passion, and that the court failed to fix the maximum punishment for such
1897 offense; that is, that he, if found guilty, his punishment should be assessed at imprisonment in the State penitentiary for a term of not less than ten years or for his natural life. The minimum punishment was fixed by the instruction complained of, but the maximum was not.

What has heretofore been said in respect to the instruction on murder in the second degree makes it manifest that this complaint is without merit.

Counsel for appellant challenge the correctness of instruction No. 3, which is as follows: "If you believe and find from the evidence that the defendant, Frederick Seymour Barrington, at the

county of St. Louis and State of Missouri, on or about the 18th day of June, 1903, at a time prior to the 2nd day of October, 1903 (being the date of the filing of the indictment herein), feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought forcibly and violently made an assault with his hands and arms upon the said James P. McCann, and then and there feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought with his said hands and arms pushed, threw, and cast the said James P. McCann into a pond there situated, in which there was a great quantity of water, and by means of such casting, throwing, and pushing the said James P. McCann into said pond of water the said defendant, Frederick Seymour Barrington, feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought then and there caused the said James P. McCann to be choked, suffocated, and strangled and drowned, and that by reason of said choking, suffocating, strangling, and drowning the said James P. McCann then and there prior to the said 2nd day of October, 1903, died, then you will find the defendant guilty of murder in the first degree, and so state in your verdict."

The challenge to the correctness of this instruction is based upon the contention that it fails to state that the pushing into the
1898 pond was with a design to effect death. This was neither necessary in the indictment nor the instructions. The instruction requires the jury to find every essential element in the commission of the act which resulted in McCann's death, and it is nowhere contended that the instruction does not contain all of such elements. The instructiion makes it incumbent upon the jury to find that the defendant feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought with his hands and arms pushed, threw, and cast the said James P. McCann into the pond there situated; then follows the charge that by reason of such wilful, premeditated, and malicious act McCann was choked, suffocated, and strangled and drowned, from which he died. There was no necessity for requiring the jury to find that he designed by the commission of such acts to kill McCann, for the reason that when the acts are alleged to have been committed, which resulted in his death, the legal presumption follows that he intended the consequences of such acts, and in the absence of any testimony indicating that he did not design his death, the jury would be fully authorized in indulging the presumption from the commission of the act, that he intended to kill him by the means employed. There was no error in this instruction.

XIII.

It is urged that the court committed error by refusing instructions numbered 1 and 2 requested by defendant at the close of the testimony. Instruction No. 1 covered the subject of circumstantial evidence and directed the jury as to the essential requisites of the show-

ing upon that character of evidence which would authorize a conviction. Number 2 was upon reasonable doubt of the defendant's guilt.

We have carefully considered the instructions given by the court upon the testimony elicited in this cause, and it is manifest that instructions Nos. 11 and 12 fully covered the law upon the subjects to which the refused instructions had reference. The directions of the court in the instructions covering those subjects stated the law
1899 fairly, clearly, and fully as favorable to the defendant as the law warrants. The law upon those subjects having been fully covered by appropriate instructions given by the court, there was no error in refusing the instructions requested by the appellant. State v. Frank, 159 Mo., 535; State v. Nelson, 166 Mo., 191; State v. Bradford, 156 Mo., 91.

XIV.

Appellant challenges the sufficiency of the first, second, and third counts of the indictment. It will suffice to say that the first count of the indictment is not subject to the criticism indulged by the appellant; that is, that it fails to charge an assault. An examination of that count demonstrates that the assault is charged in the form that has been repeatedly approved by this court.

The challenge to the sufficiency of the second count of the indictment is predicated upon the same objection urged to instruction No. 3; that is, that the indictment fails to allege that McCann was pushed into the pond with a design to effect death. Upon this subject we have examined the precedents of that eminent author, Mr. Wharton, and find that this count in the indictment complained of is in harmony with and substantially the same form as his precedents in charging an offense of this character. Wharton's Precedents of Indictments and Pleas, vol. 1, top page 123. This count of the indictment contains the allegation of every essential element necessary to constitute the offense, and it is manifest that there is no necessity to allege in the terms suggested by appellant, that the design in casting or pushing McCann into the pond was to effect death. The intention and design to effect death are clearly embraced in the allegations charging the offense. An analysis of the charge shows that it is substantially alleged that he feloniously, wilfully, deliberately, premeditatedly, and with malice aforethought committed certain acts which resulted in the death of McCann, and that is followed in the concluding portion of the charge that the defendant in the
1900 manner and by the means aforesaid feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did kill and murder. The language employed clearly charges an intentional killing in the manner and by the means as charged in the indictment. We have no hesitancy in saying that this count in the indictment, following the precedent of Mr. Wharton, correctly charged the offense.

The third count of the indictment is challenged on two ground: First, that it is defective for the reason that it charges proximate

causes of death. Again we have consulted Mr. Wharton's Precedents, and find that this count in the indictment is in perfect accord and harmony with them. Second, it is insisted that this count in the indictment is vague, indefinite, and uncertain, on the ground that it is first charged that the assault was made and the wound inflicted with a "revolving pistol," followed by reference to the infliction of such wounds as being "gunshot wounds."

From an examination of this count in the indictment it will be observed that it is first charged in due form the infliction of certain wounds by a revolving pistol, and then follows the charge that at the same time and place that the defendant "did then and there immediately after the giving and inflicting the said gunshot wounds in the manner and form aforesaid, and at the time and place aforesaid in and upon the body of the said James P. McCann did then and there," etc., following with the detailed charge of pushing and casting him into the pond of water, etc. It is apparent from the terms used in this charge that the use of the terms "gunshot wounds" could have reference to no other wounds except those which had been previously charged to have been inflicted by a revolving pistol; for it expressly avers that the gunshot wounds inflicted in the manner and form aforesaid, and at the time and place aforesaid. The only wounds previously alleged were those inflicted with the revolving pistol, and the time and place of their infliction were alleged; hence it is manifest that the gunshot wounds referred to could only relate to the wounds inflicted by the revolving pistol. As suggested by the learned counsel representing the State in this cause, "the word 'gun' is a generic term and includes the word 'pistol.' It is defined in Webster's Dictionary as meaning 'any firearm for throwing projectiles by the explosion of gunpowder, etc.' In common usage the word 'pistol' and 'gun' are used interchangeably, and as the averment was 'after the giving and inflicting the said gunshot wounds in the manner and form aforesaid and at the time and place aforesaid,' etc., it would seem that it was not open to the objection that it was 'vague, indefinite, uncertain, and argumentative.'"

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XV.

It is insisted by appellant that the court committed error in the admission of the statements and admission of defendant while under arrest. Upon this proposition the record discloses that the jury was excluded and many witnesses heard by the court in laying the proper foundation for the introduction of such statements. The court heard this testimony and determined that the statements were voluntary, hence admitted them. With the exception of the testimony of the defendant the evidence tended strongly to show that there were no promises or threats made as an inducement to making the statements offered in evidence. The mere fact that the defendant was in charge of an officer does not render any statements that he may make inadmissible, if it appears that

they were not induced by threats or promises of reward or the hope thereof, nor does the fact that the statements of the defendant were elicited by questions put to him by an officer or private persons render them inadmissible, nor is it any sufficient ground of objection that the questions propounded to the defendant by those seeking a statement from him assumed his guilt, or that he was not warned that his statements would be used against him. Kelley's Crim. Law, pp. 180-181; State v. Jones, 54 Mo., 478; State v. Phelips, 74
1902 Mo., 128; State v. Northway, 164 Mo., 513; State v. McClain, 137 Mo., 307; State v. Rush, 95 Mo., 199; State v. Guy, 79 Mo., 430; State v. Shackelford, 148 Mo., 493.

XVI.

Mrs. McCann, the widow of the deceased, was called as a witness, and in seeking to have this witness identify the coat that had been found that deceased had on the night it is charged he was killed, a pair of trousers or pants was exhibited to the witness, and she testified that the pants were those of Mr. McCann, and that the coat that he had on the night it is alleged he was killed was of a similar material.

It is contended by appellant that the exhibition of those trousers to the witness on the stand constitutes reversible error. To this contention we can not give our assent. The trousers were not introduced in evidence, and there was no pretense that the deceased had on those trousers the night he is charged to have been killed, and they were simply shown to the witness, being the pants of the deceased, as an aid in describing the material of which the coat that he did have on was made. Before the pants were shown to the witness she had described the coat in a general way, and when the coat was exhibited to her she swore that that was the same coat McCann wore away at the time of his disappearance. It is but common experience in the trial of cases in courts that articles are frequently described by reference to some other article of similar character; for instance, it frequently occurs that a witness who is testifying, and a description of clothing or other article is sought, and he says, "I had on a coat like or similar to the one the gentleman sitting over there has on," or, pointing to some other article in the court room, states that the article he is undertaking to describe was somewhat like that, or in describing a knife, that is not before the court and jury, he takes a knife out of his pocket and says, "It was a knife similar to this one." It will certainly not be seriously con-
tended that testimony given in that manner would be reversible
1903 error. The reference to the trousers by Mrs. McCann was not different to the ordinary and usual way of identifying articles, as above illustrated. There was no error in such examination of this witness, and we are unable to possibly conceive how the mere fact of exhibiting the trousers to this witness, in the manner in which it was done, could in any possible way harm the defendant.

She had previously described the coat, and afterwards fully iden fied it. The pants were not introduced in evidence, and even thou it be conceded that their exhibition before the jury was immater and incompetent, still we repeat that it could in no way have h any influence upon the jury in returning their verdict. In additi to this, the court instructed the jury not to consider it. Upon t proposition counsel direct our attention to the cases of State Thomas, 99 Mo., 235, and State v. Goddard, 162 Mo., 227. A care analysis of those cases will clearly demonstrate that they are parallel cases with the case at bar upon the question presented.

We are of the opinion that, in any view to be taken of the examin tion of Mrs. McCann in respect to the trousers, there was no er committed by the trial court which would authorize the reversal this judgment.

XVII.

Appellant complains at the admission of certain property identif as that of McCann, the deceased. While upon this question it may said that the identification by some of the witnesses was not ab lutely positive and clear, yet it must be remembered that upon question of identification that the opinion or belief of witnesses a the identity of persons or things when such opinion or belief r upon facts within the witness's own knowledge is competent evide although the witness will not testify positively to such identity; testimony of this character is at least a sufficient foundation for exhibition of the articles to the jury. State v. Cushenberry, 157 M 168; State v. Howard, 118 Mo., 127; State v. Hopkirk, 84 Mo., 2 State v. Babb, 76 Mo., 501.

1904 The exhibition of the articles, which had been sufficien identified, to the jury does not mean that the jury must acc it as conclusive evidence that those were the articles of McCann, they simply hear the testimony and then upon their final conside tion determine for themselves as to whether the testimony of the nesses was sufficient to authorize them to find the ultimate fact—t the articles exhibited were in fact the property of McCann. Th was no error in the admission of this testimony.

XVIII.

The court properly excluded the evidence offered by defendant to the custom of police officers in examining and searching prison Evidence had been offered by the State as to the examination search of the defendant, and the only purpose of this evidence wa affect the credibility of the witnesses on the part of the State testi ing to such search and examination. We know of no rule wh would permit a witness to be impeached or his credibility assailed this sort of a way. The question presented was as to how the ex ination and search of the defendant was made, and a full opportu

was afforded defendant to show that it was not made in the manner testified to by the witnesses, and as well the right of cross-examination of such witnesses with a view of ascertaining whether or not they in fact made the search and examination in the manner as testified to by them. The testimony was properly excluded.

XIX.

This leads us to the final contentions of the appellant, that is, that the corpus delicti was not sufficiently established; that the court erred in submitting the question of murder in the first degree to the jury, and that the verdict of the jury was the result of bias passion and prejudice, and is contrary to the weight of the evidence as well as the law of the case. We will treat these final complaints altogether.

1905 At the very inception of the consideration of the propositions involved in these contentions it is well to first determine as to what are the essential elements of the body of the crime. The law is nowhere more clearly or correctly stated than in State v. Henderson, 186 Mo., 473. It was there said by this court: "The corpus delicti in murder consists of two elements, to wit, the death of the person alleged to have been murdered, and the criminal agency of some one causing the death. Both of these must be established in a prosecution for murder or the conviction can not stand. As to the proof of the death of the person alleged to have been murdered, it is quite often stated that at common law the fact of death must be established by direct or positive evidence, but now, by the weight of authority in this country, the fact of death, as well as of criminal agency, may be shown by circumstantial evidence, when that is the best evidence obtainable, and provided always that it is sufficient to produce conviction in the minds of the jury beyond a reasonable doubt."

It is apparent that an intelligent solution of this proposition necessitates at least a brief review of the important facts developed in the trial of this cause. McCann and the defendant left the Leland Hotel on the evening of June 18, 1903; McCann was in usual good health and spirits, telling his wife as he was leaving that he would return in a short while. Both of these parties were observed on the car going to Bonfils after 10 o'clock that night; McCann was talkative and in good humor during the trip, and inquired when the next car went back, saying that he must get back on that car. McCann and defendant left the car about 10.35 p. m., and McCann was last seen alive (by any other person) when leaving the car, walking with the defendant along the path leading to the quarry. In a few minutes after they were seen going to the quarry a pistol shot, then a cry and another pistol shot were heard coming from the direction in which

1903 these two men went, and then no further sound is heard. Early the next morning the man who was last seen with McCann, who was the defendant, late the night before, is concededly near the quarry where they were last seen together. The defendant is

seen walking back towards the city alone, a distance of twelve miles, notwithstanding the testimony tends to show that he had money in his pocket to pay for riding, and did ride as soon as he reached the city. There is testimony indicating that in walking along, when the defendant would see a car approaching, there was some effort on his part to prevent his identification. In his possession he is carrying McCann's cane and wearing a hat entirely different to the hat that he wore on going out to Bonfils, and that at least had some resemblance to the hat of the deceased, McCann. The defendant returns to the Leland Hotel, his clothing is wet, muddy, and soaked with blood. In a short time after the defendant returned to the city, near the pathway he traveled that morning were found the shoes and a stocking of McCann, worn by him the night of his disappearance, and about three months after that time other clothing and jewelry are found hidden along the route journeyed by defendant on his return from Bonfils station. Something near a week after McCann had left the Leland Hotel in company with the defendant, going to Bonfils, a corpse is found in the quarry where the shots and cry were heard; the condition of the body indicated that death had occurred several days before. The body of the corpse was entirely naked; the thumb had been cut through the tendons, two gashes are found on the cheek and neck, just above the throat and in front of the jugular vein, two bullets found within the skull, one of which would have produced a fatal wound. On the bank of the quarry is found a bloody razor handle, some cartridges, and McCann's pocketbook. This dead body is fully identified as that of James P. McCann; the tendency of the evidence of certain witnesses clearly tend to prove that fact. One of the witnesses, B. T. Hume, a brother-in-law, testified that "it was the body of James P. McCann." He said:

1907 "I identified it by marks that were on it; a mole on the right of the breast and a scar from a burn below the navel; I learned of the burned spot from what his mother and the family said; I had not seen that for two or three years; I had seen that scar dozens of times altogether; we were boys together; I saw the mole on the breast very often; the mole and the scar that I saw on the body at Sheehan's undertaking establishment were the identical ones that I had seen on McCann in his lifetime; I didn't see all of the body; some of it was missing; there is no possibility, none on earth, of my being mistaken in that identification." In addition to this there was testimony tending to show that the defendant was seen near the scene of where this murder is charged to have been committed a day or two before. He had said to the McCanns that he had been out in St. Louis County to visit some English friends, saying that McCann and his wife were invited out there; however, it seems that on the evening of the 18th, when they went out there, there was some mistake, and that Mrs. McCann was not invited, and she did not go. The day that McCann and the defendant went out to Bonfils defendant told McCann about some pension papers he claimed to have, on which he said his English friends would loan him $1,000, and wanted McCann to

go with him to get it. After the defendant's return to the Leland Hotel, on the morning of the 19th of June, he made many false and contradictory statements as to where he and McCann went on the night of the 18th of June, and he persisted in the truth of those statements until compelled to abandon them because of his identification by the railroad men. He undertook to exercise upon his return acts of proprietorship of the hotel, and required one of the boarders, Leonard, to leave. There was also a constant refusal to investigate McCann's disappearance, and he refused to go to the place where he said the trouble occurred, and made suggestions to Mrs. McCann of the unfaithfulness of her husband; finally he told her that he had seen McCann three times since his disappearance, and would
1908 offer to take her and her sister to where he was if they would agree not to insist on seeing him. It further appears in evidence that after the discovery of the corpse out at the quarry and before defendant's arrest that he sent his trunk to the Union Station and instructed the expressman not to tell where he got it. In addition to this, after the return to the city from Bonfils, was the testimony tending to show that he collected $164 won by McCann on the races, the check for which McCann had in his possession when he and the defendant left on the evening of the 18th for Bonfils. There were many other damaging circumstances introduced in evidence against the defendant tending to show his cunning and plans in his efforts to conceal the fact that anything had happened to McCann. All of these convincing circumstances pointing to the guilt of the defendant, if susceptible of explanation, so far as the record discloses, were practically left unexplained, except in some particulars by the testimony of the defendant himself. There was, in addition, the circumstance introduced by the State of the finding of certain property of McCann on the mud board of the wagon in which the defendant had been conveyed to the police station, and while this circumstance is weakened perhaps by reason of the former search and examination of the defendant and the property not found upon him, and the opportunity of other parties to place such property on this board, yet, when considered in connection with all the circumstances detailed in this case, it still remains a circumstance which was properly submitted to the jury.

This is an important case, involving the life of a human being, hence we have given careful consideration to the details of the disclosures of the record in this cause. Confronted with the facts as indicated herein, as well as the numerous others disclosed by the record before us, we see no escape from the conclusion that the body of this crime was sufficiently established to fully warrant the jury in the conclusion reached by their verdict. No one can review the details of the circumstances developed upon the trial of this case without being convinced that McCann was murdered, and
1909 equally convinced of the criminal agency of this defendant in the commission of that crime. The court and jury had the witnesses before them; the testimony as disclosed by the record in-

dicates most clearly that the dead body found was that of the deceased, McCann, and the circumstances connecting the defendant with the killing of the deceased point unerringly to his guilt.

It may be that by reason of the notoriety attained by the defendant through the press that unfavorable conditions surrounded his case at the time of the trial. That frequently occurs in causes of this character; however, it must not be overlooked that those conditions were created by the defendant, about which he has no legal reason for complaint. He was tried by a court and jury in the county where his offense was committed; his counsel have left nothing undone to the interest of their client which could be accomplished in the honorable practice of their profession, all of which is made manifest by the careful preservation in the record of every unfavorable ruling of the trial court, as well as in the able presentation of this cause in this court. Whatever results may flow from the conduct and life of this defendant, the responsibility for such results must rest with him.

While this is a case of purely circumstantial evidence, and the circumstances in proof should clearly establish beyond a reasonable doubt the guilt of the accused, yet it must be conceded in this case that the circumstances detailed by the witnesses before the jury were extremely strong and convincing, and unless we are willing to take the advanced step and say that persons can not be convicted of capital offenses upon circumstantial evidence, then it must logically follow that the appellate courts can not usurp the province of the jury and determine the facts, and this verdict should not and will not be disturbed on the ground of insufficiency of proof.

Upon the question suggested by counsel for appellant that
1910 the court erred in submitting this cause to the jury upon murder in the first degree, it must suffice to say that if there is any force and vitality in circumstantial evidence, then this cause should have either been submitted upon that grade of the offense, or not submitted at all.

We have thus indicated our views upon the numerous assignments of error disclosed by the record and so ably presented by counsel for appellant. Nothing remains except to announce our conclusion, which is, that finding no reversible error in the record before us, the judgment of the trial court should be affirmed, and it is so ordered.

All concur.

JAMES D. FOX, J.

1911 PER CURIAM.

This cause having been sent to banc from Division No. 2 of this court, and being reheard in banc, the foregoing divisional opinion by Fox, J., was adopted as the opinion of the court in banc, and in accordance therewith the judgment of the Circuit Court of St. Louis County is affirmed.

Brace, C. J., Gantt, Burgess, and Lamm, J. J., concur; Valliant and Graves, J. J., dissent.

1912 In the Supreme Court of Missouri. Court in banc.
April term, 1906.

STATE OF MISSOURI, RESPONDENT,
vs.
FREDERICK SEYMOUR BARRINGTON, APPELLANT.

There is no country on the face of the earth where the life and liberty of the individual, whatsoever his station, is more highly prized or more sacredly guarded than in this land of ours. When we read, as we sometimes do, the proceedings of the court in a criminal case of celebrity in some other country, although, if our sympathy happens to be on the side of the prosecution, we may excuse the celerity and promptness with which conviction has been accomplished and say it was well enough since it happened there, yet, however we may applaud the result we contrast those court proceedings with the orderly proceedings in criminal trials in this country and congratulate ourselves that such proceedings could not occur here; that in our courts the accused are given fairer trials. It sometimes happens that in the strict application by our courts of the rules of law prescribed by the law-making power of the State for the orderly procedure of criminal trials, the community shows impatience at the delay and the result, yet that same community, when passion has subsided and it comes to speak its sober second thought through its representatives in the general assembly, would not repeal or alter one feature of that law which was aimed only at securing to the accused a fair trial. The milestones along the path of the progress of civilization are in no respect more clearly marked than in the changes that have been made, as enlightment has come into the minds of our lawmakers in regard to the treatment of men arraigned before the bar of justice to answer for crimes. It has not been a great while, measuring time by the life of the nation, since a defendant in a criminal case in England was not allowed to have the aid of counsel learned in the law, but he had to depend for what aid in that way he might get upon the impartiality of the judge who tried the case or the mercy of the counsel
1913 who prosecuted in behalf of the Crown, and beyond that court there was no appeal. But that law has never been our law since this has been a free country, and although our people in a time of excitement may declaim against our law as it is, yet after a while the excitement passes away and no voice is heard in the halls of the legislature demanding a return to the laws of those ancient days when the life and liberty of a man were esteemed of little value. But if those who are appointed to administer laws that are designed to give every man a fair trial are themselves subjected to the influence of an excited community, it is sometimes impossible for them, however honest and conscientious they may be, to resist that influence, and the result is that unconsciously their judgment is biased. Our law recognizes the liability of that condition, and by providing for a change of venue it has humanely and wisely made provision to guard against it and to

secure to the accused, even in spite of such condition, a fair trial. From the other side of the ocean occasionally comes a reproach that we are addicted to mobs and lynching, but, admitting that we do sometimes have mobs and that they are lawless and barbarous, inflicting the swift and cruel vengeance of an intensely excited community, still it can not be said of them that, while pretending to give the man a fair trial according to law, they disregard plain rules prescribed for his especial protection. If law is to be violated and wrong is to be done, it is better that it be done by a lawless mob than by a tribunal created and commissioned to administer justice according to law.

There are many reasons why, in my opinion, this judgment should not be affirmed, and those reasons all combine to establish one proposition—that is, that this man did not have a fair trial. Every step in the case, from his arrest to his trial, was attended with dramatic scenes that evinced no care to guard from unjust imputation the man who, howsoever unsavory his reputation and howsoever strongly involved in apparently incriminating circumstances, might, in fact, still be innocent and who was in law presumed to be innocent.

1914 It is not my intention to undertake to state in detail the facts on which this prosecution was based, but briefly I will say that in June, 1903, one James McCann, who had been sojourning in St. Louis a short while, disappeared; a few days after his disappearance a dead body was found in St. Louis County bearing evidence of death by violence; there was evidence tending to identify it as the body of McCann, and there was also circumstantial evidence tending to show that the defendant was the man who had committed the deed. The defendant had been, for some months before that, very much in the public mind in a very unfavorable light. It was said of him that he had falsely pretended to be an English lord, under which pretense he had married a young woman here; his false character was exposed, he was convicted of some offense, not very clearly stated in this record, and sentenced to the city workhouse; was pardoned by the mayor and was immediately employed by a saloon keeper in the city, who gave his concern the name of "The Lord Barrington saloon." McCann was a sporting man, interested especially in race horses; instead of sharing in the general unfavorable estimation of the supposed English lord he seems to have been attracted to him by his notoriety, sought his acquaintance by visiting him at the saloon which bore his name, and on his first meeting expressed admiration and friendship for him, gave him $50 as a token of his esteem, and invited him to live with him at a house he was keeping, which he called the Leland Hotel. This circumstance indicates to some extent the kind of man McCann was; and whilst, of course, the character of the man would in no degree be a palliation for the crime, yet it is of some assistance to the triers of the fact who are asked to draw inferences from the circumstances. The only thing that McCann knew of the defendant was what the daily press, which held him up as a most despicable character, said of him, yet that character was to

McCann so attractive that he sought his acquaintance and pledged him his friendship on first sight. One of the defenses was that McCann, concerning whose past life, character, and business there was evidence, had contracted enemies who had waylaid him.
1915 It is charged that the defendant murdered his best friend; if friendship is to be taken into account let us note that this was a friendship based on a diseased sentimentality.

Barrington accepted McCann's invitation, went to his hotel, and became a sort of assistant manager of the business. On the evening of June 18th, 1903, these two men left this house together. They went to the Suburban Garden, thence on the St. Charles electric railroad to a point in St. Louis County called Bonfils, when they left the car, and that is the last that was seen of McCann alive. The defendant returned to the hotel the next morning about 9 o'clock. When the dead body supposed to have been that of McCann was found, suspicion rested on the defendant, and public interest in him was again aroused; the newspapers took up the subject, and defendant's past life and character, as indicating a man capable of such a crime, became their theme and the overshadowing sensation for the time being. He was arrested, subjected to what the State's witness called "a course of sweating," and lodged in jail. During his preliminary examination, which took place at the court-house at Clayton, the county seat of St. Louis County, a witness states that whenever the ruling of the examining magistrate on a question was in favor of the State the audience applauded. While he was in jail awaiting his trial the managers of one of the public theatres in St. Louis caused to be prepared for the stage a sensational drama, to which was given the name "The Desperate Lord Barrington," and which dealt in a highly melodramatic style with the supposed life and character of the defendant, showing him in the most despicable light and professing to portray on the stage the murder for which the defendant was being held. When this drama was advertised the defendant petitioned the court to have the parties who were purposing to put it on the stage cited for contempt, but the court denied the petition and the play went on. After it had been enacted and the prejudicial effect which it was liable to have on the defendant's cause was shown to the court, the defendant again applied to the court to have it stopped, but the court again refused and the play went on. Afterwards the defendant moved the court for a change of venue
1916 on the ground of the prejudice of the inhabitants of St. Louis County, and at the hearing introduced the testimony of a large number of citizens of the county to sustain the charge of prejudice; he introduced also numerous articles published in the principal newspapers of the city calculated to create prejudice of the strongest kind against the defendant, and he introduced evidence of the character of the melodrama above mentioned, enacted on the stage of the theatre. But the court denied the application for a change of venue.

Defendant filed a plea in abatement to the indictment on the ground

that the State had failed to endorse the names of its witnesses on the indictment. There were 29 witnesses examined by the State whose names were not endorsed on the indictment. The prosecuting attorney testified that to the best of his recollection he did endorse on the indictment the names of all the witnesses who appeared before the grand jury. The testimony for defendant on that point showed that 11 of these 29 witnesses had been subpoenaed by the State in the preliminary examination, and 3 of them had testified before the coroner. The defendant asked the court to require the State to produce the subpoenas that had been issued for the witnesses to come before the grand jury, but the court refused. The plea in abatement was overruled.

During the trial the State was allowed over the defendant's objection to introduce testimony as to what the defendant was said to have said implicating himself during the sweating process. The State was also allowed to cross-examine the defendant on matters concerning which he had not testified in chief.

The above is a very brief outline of the case, but it is sufficient to present the points to which I would call attention.

I.

Section 2517, R. S., 1899, requires the names of the State's material witnesses to be endorsed on the indictment. It is not for the courts to discuss the wisdom of the law; it is sufficient for us to know that it is the law, and it is our duty to enforce it. It was made for 1916 the benefit of the accused. It is one of the rules prescribed by the legislature to secure him a fair trial. It does not prohibit the State calling other witnesses who were unknown to the prosecuting officer when the indictment was presented, but it does mean that the State shall not purposely withhold the names of witnesses and surprise the defendant with them on the trial. It calls for good faith and fair dealing. The evidence tends to show that some of these witnesses were known to the State's attorney and what their evidence was. Besides, the court by refusing to order the production of the grand jury subpoenas deprived the defendant of the means of contradicting the evidence of the prosecuting attorney that the names of all the witnesses who were before the grand jury were endorsed on the indictment. But in view of the other more important features of this trial, I regard the failure to endorse the names of the witnesses on the indictment as of comparatively small consequence, and especially since if a new trial should be granted the defendant, now knowing the names of these witnesses, can not again be placed at disadvantage on that account.

II.

In the olden times, to which I have already alluded, when one suspected of a crime was arrested he was put to the torture and broken piece by piece until the confession came; whether guilty or not guilty, the confession usually came. We have advanced many

milestones from that station; we no longer break them on the wheel; we now only "sweat" them, and some of these days we will advance beyond that station. When this man was arrested he was taken to the office of the chief of detectives, and from 9 o'clock in the evening until 2 o'clock in the morning he was subjected to what the witness for the State called "a course of sweating."

According to testimony in his behalf all the technical skill and ingenuity of the most experienced experts bore upon him to entrap him into saying something that would be evidence against himself. There was no threat—no promise—oh, no; in fact, the prisoner was expressly told that they would make no threat; they would
1918 make no promise; he was entirely free to answer or not as he might elect; yet free as he was, the sweating process went on until at length his nerves gave way; he broke down and wept. What he said on that occasion was given in evidence by the State, and the court in its instruction to the jury on that point said: "What the defendant said against himself, if anything, the law presumes to be true, because said against himself. What he said for himself you are not bound to believe, because said in a statement or statements proved by the State, but you may believe it or disbelieve it, as is shown to be true or false, as shown by all the evidence in the case."

I am not going now to contend that that testimony was illegal, because although we have advanced beyond the rack and the wheel we still cling to the "sweating process." But I do contend that testimony so obtained should not be given to the jury with the stamp of the legal presumption of absolute truth upon it. The jury could not have understood the instruction to mean anything else than that what the prisoner said that might be construed as tending to incriminate himself was to be taken as gospel truth, while what he said which tends to exculpate him is to be received with caution and believed or disbelieved as the other evidence in the case might warrant. Not only does the court by that instruction invade the province of the jury who alone are entitled to weigh the evidence and determine the credibility of the witness, whether he be the party in interest or not, but it fails to distinguish between what all the law-writers on the subject call solemn admissions, that is, admissions in judicio, or admissions extra judicium which have been made to influence the conduct of others and therefore worked an estoppel, and mere verbal admissions. Those of the first class are presumed in law to be true (1 Greenleaf on Ev., sec. 27), while those of the second class should be received with caution. Id. Sec. 45. And in sec. 200 the author says: "With respect to all verbal admissions, it may be observed that they ought to be received with great caution."

1919 In connection with the instruction above quoted I would call attention to instruction No. 22 given by the court concerning the testimony of the defendant himself. "The defendant is a competent witness in his own behalf. The fact that he is the defendant and

the interest he may have in the result of the case may be considered by you in determining the credibility of his testimony, but on the whole you should consider and weigh his testimony under the same rules as that of the other witnesses, as explained in the other instructions." If the jury were to weigh his testimony under the same rules as the testimony of the other witnesses was to be weighed, why single him out and caution the jury to bear in mind his interest, and, therefore (by implication), his strong temptation to testify falsely in his own behalf?

There is no authority in our statute for such an invasion of the jury's province. Section 2637, which gives a defendant, or the wife or husband of a defendant, the right to testify in his behalf, says that the fact of the interest may be shown; that is, proven, for the purpose of affecting his or her credibility, but that does not authorize the court to single out the witness, whether it be the defendant, or the defendant's husband or wife, and comment on his or her testimony; in fact, section 2639 expressly forbids the court to comment on the evidence. I am aware that instructions of like character in other cases have been approved by this court, but I am not reconciled to them.

When the defendant was on the witness stand and had finished his testimony in chief, counsel for the State, on cross-examination, took up the subject of his past life, and asked him questions about it, some of which he answered and some he refused to answer, and it is difficult to say whether the reluctant answers he gave or the refusals to answer made the more injurious impression on the jury; they were both calculated to seriously injure his defense. These were subjects not touched upon in his direct testimony, and, therefore, the State had no right to examine him about them.

1920 The questions related to some of the accusations contained in the newspaper statements shown in evidence on the motion for a change of venue, among which were the murder by defendant of an officer in the British army, his marriage under the name of Burton to a woman in New York, his marriage under the name of Lord Barrington to a woman in St. Louis, his sentence to the workhouse in St. Louis, and other matters designed to hold him up before the jury as a man well worthy of death even if he was not guilty of the murder for which he was being tried. The court seems to have admitted this evidence on the theory that it bore on the question of the credibility of the witness. The statute which allows a defendant to testify in his own behalf and expressly limits the right of cross-examination to matter referred to in his examination in chief says: "He may be contradicted and impeached as any other witness in the case." Sec. 2637. The fair construction of that clause is that he may be contradicted and that testimony showing his general reputation in the community for truth may be given. If it means that for purposes of impeachment he may be examined on every subject that has ever come into his life for the purpose of degrading him, then

the words of the statute which limit the subjects on which he may be cross-examined may as well be stricken out; if the statute allows a cross-examination like this there is no limit to the cross-examination to which he may be subjected.

It is said in the brief for the State that this point was not properly brought to the attention of the court in the motion for a new trial. That is so, if the general statement that the court admitted illegal evidence is not sufficient. But when a man's life is at stake, is this court going to overlook so grave an error as this for so small a technicality? The counsel for the prisoner and the prisoner himself pressed their objections to the question to the very verge of flat refusal to answer after the court had ordered him to do so, and provoked the court into reprimanding the prisoner in the presence of the jury for such refusal, and drew from the prosecuting attorney
1921 this damaging remark: "If he wants to avail himself of his constitutional privilege for fear of incriminating himself, that is a constitutional privilege." To which remark, when objection was made, the court ruled as follows: "You gentlemen don't refrain from making remarks on either side. You should not do so." Which, if a rebuke at all, was as much a rebuke to the defendant's attorney as it was to the State's attorney who had made the objectionable remark. That course of cross-examination should never have been allowed; even if no objection had been made to it, the court, who sits to administer justice, should have protected the prisoner from such wrongful procedure.

I come now to a consideration of what I consider the gravest error in the case; that is, the refusal of the court to grant a change of venue.

It will be impossible in the space which I am willing to take in this opinion to give anything like a detailed summary of the evidence that was presented to the court in support of this application. A large number of respectable witnesses of St. Louis County testified that there was a prejudice in the minds of the people of that county against the defendant; but the strongest evidence was the production of the newspapers which circulated in the county and which moulded public opinion. Every strong, influential newspaper in the city published, day after day, columns of the most damaging statements concerning the man. These professed to have discovered and brought to light events in his past history connecting him with the most atrocious crimes in Europe before he came to America, and the despoiling of at least two young women under fictitious marriages in this country; then they took up what was said to be the evidence in this cause, and showed the defendant in the light of the cruel murderer of his best friend; there could be, according to the newspapers, no doubt of his guilt. To such a high point in the public mind was the subject brought that the managers of one of the prominent theatres in the city caused a most thrilling melodrama entitled "The Desperate Lord Barrington" to be prepared and put upon the

stage, in which this defendant was the chief villain and McCann his latest victim. The play was advertised in all the prominent newspapers and in flaming posters. In the posters it was described as "The acme of sensational melodrama—A play filled with thrills, throbs, laughter, and tears—It quickens the pulse beats, excites emotions, and stirs the better nature of every auditor—A play in which virtue wins and the villains get all that is coming to them." The chief actor in the play was, in theatrical parlance, "made up" to look like the defendant, and imitated his voice and manner. According to the play the defendant was guilty of murdering the real Lord Barrington before he came to America, and besides marrying several women, committed another murder in this country before he landed in St. Louis. The scene of the climax of the drama was made to represent the rock quarry near Bonfils, in St. Louis County, where the dead body was found, and there the defendant and McCann appeared.

1922

It is eight miles from the court-house in St. Louis to the court-house at Clayton. Clayton is a close suburb to the city of St. Louis; two lines of street cars connect it with the city. The inhabitants of St. Louis County are so intimately connected with the city in vicinage, in social and business relation, that it is impossible for them to be uninfluenced by that which influences to a high degree the inhabitants of the city.

In matters of the kind we are now considering the newspapers, especially when they are all agreed, mould public opinion. When these newspapers, with their exciting reports of alleged discoveries of inculpating evidence, and the character of this extraordinary theatre perfomance, were laid before the court on the motion for a change of venue, there was no necessity to call witnesses to testify that there was a prejudice in the minds of the people of St. Louis County against this man. No case has ever come under my notice where the evidence on this subject was so overwhelming. The inhabitants of the county, if they possessed that abhorrence to crime that is felt in all enlightened communities, could not, when subjected to these influences, have failed to have conceived a strong prejudice against this defendant.

1923

It is said in the brief for the State that the application for the change of venue was not supported by the affidavit of two credible disinterested witnesses of the county as required by section 2576, R. S. 1899. It appears that the application was supported by the affidavit of two witnesses, just what the particular objection to them it does not quite appear, but I consider that immaterial at this stage of the case. The court might have refused to receive the application or hear evidence in support of it if it was not fortified as the statute requires, but after receiving the application and hearing the evidence pro and con, the court could not deny the petition because of such a trivial technical defect, if the testimony showed that the change ought to have been granted, no court would stick in the bar in such a matter.

It is also said that the application for the change of venue was addressed to the discretion of the trial judge, and he having exercised his discretion it ends the case. It is a discretion to be exercised but it is a judicial discretion, not a personal one, and it is subject to review. The trial judge had the witnesses before him, was perhaps acquainted with many of them and therefore better able to judge of the weight to be given to their testimony. But the oral testimony on both sides was mere opinions, the court had before it the facts which make public opinion and with those facts in view the opinions of no number of witnesses could make it appear that this much advertised and dramatized man could have a fair trial in that community.

Lastly it is said that the St. Louis newspapers circulate throughout the State and the probabilities are that their influence would be felt in whatever county the case might go. Possibly that may be true to some degree, but it is not likely to be true to the same degree, and at all events the law has given the defendant the right to the change, he only asks what the law gives him and we have no right to deny him by saying it will do him no good to grant his prayer. The 1924 evidence shows that he is entitled to a change of venue and if the court fears that the prejudice has gone beyond the lines of that county, it should send the case where the prejudice is least likely to exist, or at least to the least extent.

There is one other incident of this trial that I will mention.

Counsel, when arguing a case before the jury, ought to represent their client and reflect their client's mind. The State of Missouri is not vindictive; when it arraigns a man before the bar of justice to answer a charge that involves his very life, it does so with the dignity and solemnity of a sovereign and without passion. Counsel intrusted to speak for the State should speak with dignity, solemnity, and without passion, otherwise they do not represent the State. At this trial counsel intrusted with the duty of representing the State in his argument before the jury said: "In all candor and with due reverence, I wish to confess to you that during the progress of this trial, my conception of the devil has been materially changed. And if I were to portray him to you now, I would not paint him as hoofed and horned, lured with purgatorial fires, but rather would I picture him to you as arrayed in white vest and Prince Albert coat, with a voice as soft as the breath of summer and with a steel-gray eye." And while so saying he pointed with his hand across the counsel table to the defendant, who sat there wearing a white vest and a Prince Albert coat, whereupon the court said to the counsel: "That is not proper argument." It was not proper argument, it was no argument at all, it was a vindictive, passionate, pitiless, cruel denunciation of a prisoner. No one defends it; it is indefensible. But it is contended that the gentle rebuke cured the wrong that was done. How can we, who are weighing in the judicial scales the life of a fellowman, say that although this was a flagrant wrong yet the wrong

was cured? Can we enter into the minds of the jury to see what the effect of the so-called rebuke was? The words of denunciation came with hot zeal and were calculated to burn themselves into the memories of the jury. And we can not dispose of the subject by
1925 saying the court rebuked the counsel—what more could it do? If the court can do nothing more when a wrong like this has been done in a case of life and death than to say to the counsel "that is not proper," then the court has but little power to direct the course of justice, and counsel are free to indulge in such abuse if they are so inclined. But there is a power intrusted to the trial court to right such a wrong. The court in such case has the power to set aside the verdict and grant a new trial; that is the only real remedy for such wrong, and that is what it should have done in this case.

The probable cost should not influence the selection of a forum; when we put human life in one side of the scales we should not put dollars in the other side. But even from an economical point of view it is bad policy.

A large part of the enormous sums paid by the State every year for costs in criminal cases would be saved and as many criminals would be convicted if the laws of criminal procedure enacted by the legislature to secure to every man a fair trial were more carefully observed. Guilty men can be convicted in a fair trial as easily as in an unfair one, and when they have been fairly tried their conviction will stand, and the State will not be put to the expense of a second or third trial.

There are other points in the case, but I will not discuss them, because this opinion is already very much longer than I intended it should be when I began to write. In my opinion, the judgment ought to be reversed and the cause remanded, with directions to the circuit court to grant the application for a change of venue.

Graves, J., concurs in three points of this opinion, viz, that the judgment should be reversed and the cause remanded: First, for the refusal to grant the change of venue; second, for the improper cross-examination of the defendant; third, for the improper remarks of the attorney for the State.

LEROY B. VALLIANT, J.

1926 And afterwards, to wit, on the 9th day of June, 1906, the further following proceedings were had in said cause, viz:

STATE OF MO., RESP.,
v.
F. SEYMOUR BARRINGTON, APP.

Comes now the said appellant, by attorney, and files his motion for a rehearing herein.

Which said motion for rehearing is in words and figures as follows, to wit:

In the Supreme Court of the State of Missouri. Before the court in banc: April term, 1906.

STATE OF MISSOURI, RESPONDENT,
vs.
FREDERICK SEYMOUR BARRINGTON, APPELLANT. } No. 12577.

Appellant's motion for rehearing.

Comes now appellant and moves the court to set aside the order heretofore made herein affirming the judgment of the Circuit Court of St. Louis County and to grant appellant a rehearing in said cause for the following reasons:

I.

Because the court, in rendering its opinion in said cause, has overlooked and failed to decide the points urged by appellant as involving a Federal question, the laws of nations, the treaties of peace and commerce between the United States and Great Britain, and the question as to whether or not appellant has been accorded a
1927 fair and impartial trial and due process of law as provided for by the Constitution of United States, Art. VI of the Amendments to the Const. U. S. and Art. XIV of Amendments Const. of U. S. And that the court has further overlooked and failed to decide whether or not the question of a denial of a change of venue in this case is a denial of a fair and impartial trial, as provided for by Art. VI of the Amendments to the Const. U. S.; as to whether or not the failure to quash the indictment or to sustain the plea in abatement in said cause was a denial of the right to be informed of the nature and cause of the accusation and to be confronted with the witnesses against him, as provided for by Art. VI, Amendments to the Const. of U. S., and as supported by points and authorities in appellant's first brief, pages 43 to 51, and appellant's brief on Federal Questions, pp. 2 and 3, and Point VI, page 12.

II.

Because the court has overlooked and failed to decide whether or not the denial of process to stop the production of the play "The Desperate Lord Barrington," or to cite the producers for contempt was a violation of the constitution of the State of Missouri.

Section 10 of Art. II, Const. of Mo., in that appellant was denied a remedy for an injury to his character and indirectly to his person, and was denied right and justice when the way was open, plain, and adequate to afford him the relief for which he prayed and to which he was entitled.

See points and authorities in appellant's first brief, pages 40 and 41, and appellant's brief on Federal questions, point IV, page 11.

III.

Because counsel for appellant, through neglect and inad-
1928 vertance, failed to call the attention of the court to the proposition that the cross-examination of appellant complained of as "improper" and the admission as evidence of statements or "confessions" made by appellant while in the "sweat box" of the St. Louis police department, was in direct violation of the Constitution of the United States.

Art. V, amendments to the Const. of U. S., in that it compelled the appellant to become a witness against himself.

Respectfully submitted.

WILFRED JONES,
Appellant's Counsel.

Received a copy of this motion on this 9th day of June, 1906.

HERBERT S. HADLEY,
Attorney-General.
JOHN KENNISH,
Asst. Atty. Genl.

And afterwards, to wit, on the 20th day of June, 1906, the further following proceedings were had in said cause, viz:

STATE OF MO., RESP.,
v.
F. S. BARRINGTON, APP.

Now at this day comes the said appellant, by attorney, and presents the motion heretofore filed for rehearing herein, doth order that said motion be, and the same is hereby, overruled.

And afterwards, to wit, on the 30th day of June, 1906, the further following proceedings were had in said cause, viz:

1929 STATE OF MISSOURI, RESPONDENT,
vs.
FREDERICK SEYMOUR BARRINGTON, APPELLANT.

Now at this day comes the said appellant, by attorney, and presents to the Hon. Theodore Brace, chief justice of the Supreme Court of Missouri, in chambers, a petition for a writ of error to the Supreme Court of the United States; and the said chief justice having seen and fully considered said petition, doth order that said writ of error be allowed, and that said writ of error operate as a supersedeas on the judgment of this court entered of record on the 1st day of June, 1906. Thereupon comes the said appellant by attorney and presents to said

chief justice a writ of error to the Supreme Court of the United States and a citation directed to said respondent, citing and admonishing it to appear at a Supreme Court of the United States on the 30th day of July, 1906; which said writ of error is allowed, and said citation signed and made a part of the record herein.

And afterwards, to wit, on the 13th day of July, 1906, the further following proceedings were had in said cause, viz:

STATE OF MISSOURI, RESPONDENT,
vs.
FREDERICK SEYMOUR BARRINGTON, APPELLANT.

Now at this day comes the said appellant, by attorney, and presents his bond herein in the sum of five hundred dollars ($500.00), which said bond is approved by Hon. Theodore Brace, chief justice, in vacation, ordered filed, and made a part of the record herein.

Which said bond is in words and figures as follows, to wit:

1930 Know all men by these presents, that we, Frederick Seymour Barrington, as principal, and Fidelity and Deposit Company, of Maryland, as sureties, are held and firmly bound unto the State of Missouri, in the full and just sum of five hundred ($500) dollars, to be paid to the said State of Missouri, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this sixth day of July, in the year of our Lord one thousand nine hundred and six.

Whereas, lately, at the April term, A. D., of the Supreme Court of Missouri, in a suit depending in said court between the State of Missouri, respondent, and Frederick Seymour Barrington, appellant, judgment was rendered against the said appellant, and the said appellant, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Missouri, citing and admonishing it to be and appear at a Supreme Court of the United States to be held at Washington, D. C., not exceeding thirty days from the date of said citation.

Now, the condition of the above obligation is such that if the said appellant shall prosecute said writ to effect and answer all damages and costs, if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

FREDERICK SEYMOUR BARRINGTON. [SEAL.]
FIDELITY AND DEPOSIT COMPANY
OF MARYLAND. [SEAL.]
By ROBT. L. MCLARAN, [SEAL.]
Resident Vice-President.

Attest: C. J. MCLARAN,
Resident Assistant Secretary.

Approved by—
THEO. BRACE, [SEAL.]
Chief Justice.

1931 STATE OF MISSOURI, *City of St. Louis*, ss.

On this 7th day of July, 1906, before me appeared Robt. L. McLaran, to me personally known, who, being by me first duly sworn, did say that he is resident vice-president of the Fidelity and Deposit Company of Maryland, a corporation organized under the laws of the State of Maryland, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that the said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and the said Robt. L. McLaran acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and notarial seal the day and year first above written.

[SEAL.] LENA E. BAER,
Notary Public, City of St. Louis, Mo.

My term expires May 23, 1909.

1932 STATE OF MISSOURI, *SCT.*

I, John R. Green, clerk of the Supreme Court of the State of Missouri, hereby certify that the above and foregoing is a full, true, and complete copy of the transcript in the case of State of Missouri, respondent, vs. Frederick Seymour Barrington, appellant, and the proceedings had and made in the Supreme Court of the State of Missouri, in said cause, as fully as the same remain of record and on file in my office.

In testimony whereof, I have hereunto set my hand and the seal of said court, hereto affixed. Done at office, in the city of Jefferson, this 16th day of October, 1906.

[SEAL.] JNO. R. GREEN,
Clerk Supreme Court.

1933 [Offices of Carlisle & Johnson, attorneys and counsellors at law, rooms 30 to 36, Fendall Law Building, 344 D street NW.]

WASHINGTON, D. C., *January 12, 1907.*

JAMES H. MCKENNEY, Esq.,
Clerk, Supreme Court of the United States,
Washington, D. C.

DEAR SIR: In pursuance of the order of the court made in the case of Barrington v. The State of Missouri, No. 493, October term, 1906, allowing the plaintiff in error to proceed in forma pauperis, and requiring counsel to designate the portions of the record necessary to be printed, I submit to you herewith the following memorandum of the pages of the transcript of record, required to be printed in the order as stated below, to wit:

Pages 1 to 30, both inclusive. Then pages 509 to 593, including the line concluding "Filed Jan. 7, 1904, F. J. Hollocher, clerk." Then beginning at third line from the bottom of p. 35, down to and includ-

ing line 17 of page 508, closing with the words "The matter under advisement until the 25th of January, 1904." Then beginning on line 12 of page 596, with the words "On January 25, 1904" down to and including line 23 on page 601. Then beginning on the 10th line from the bottom of page 976, down to and including line 13 of page 995. Then beginning at the 9th line from the bottom of page 1026, down to and including page 1099. Then beginning at page 1382, at the heading "Cross-examination of Mrs. McCann," to and including page 1453. Then beginning at 9th line from the bottom of page 1454, to and including the first eight lines of page 1464. Then beginning at the introduction of witness, Wm. Desmond, on page 1484,
1934 down to and including line 27 on page 1487. Then pages 1501 to 1541, inclusive. Then page 1618, to and including page 1685. Then beginning at line 23 of page 1718, to and including line 19 of page 1733. Then beginning on line 12 of page 1740, to and including the 9th line of page 1741. Then beginning on page 1824, down to and including page 1932.

Very respectfully, yours. W. G. JOHNSON.

1935 (Indorsed:) File No. 20458, Supreme Court U. S., October term, 1906. Term No. 493. Frederick Seymour Barrington, P. E., vs. The State of Missouri. Designation by counsel for plaintiff in error of parts of record necessary to be printed. Filed Jan'y 15, 1907.

(Indorsement on cover:) File No. 20458. Missouri Supreme Court. Term No. 493. Frederick Seymour Barrington, plaintiff in error, vs. The State of Missouri. Filed November 12th, 1906. File No. 20458.

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FILE COPY.

Office Supreme Court, U.
FILED.
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JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 493.

FREDERICK SEYMOUR BARRINGTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI.

Motion for Leave to Proceed in Forma Pauperis.

WM. G. JOHNSON,
Counsel for Plaintiff in Error.

LAW REPORTER PRINTING CO., WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 493.

FREDERICK SEYMOUR BARRINGTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI.

Comes now Frederick Seymour Barrington, plaintiff in error, in the above-entitled cause, by William G. Johnson, his counsel of record, and moves the Court to pass an order allowing the plaintiff in error to proceed herein in forma pauperis, and that the record be printed at the public expense and for cause of said motion shows:

That the plaintiff in error is now under sentence of death, as appears by the record herein. That a writ of error to review the judgment in the cause rendered by the Supreme Court of the State of Missouri, the highest court of said State, was duly allowed by the chief justice of said Court, and that the transcript of record has been filed herein in obedience to said writ of error. That the plaintiff in error is a poor person, wholly without means

to pay any of the costs in this proceeding, as appears by the affidavits filed herewith.

Respectfully submitted,

WM. G. JOHNSON,
Counsel for Plaintiff in Error.

IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1906.

No. 493.

FREDERICK SEYMOUR BARRINGTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI.

STATE OF MISSOURI, }
County of St. Louis, } *ss:*

Wilfred Jones, being first duly sworn, deposes and says that he is a member of the bar of the Supreme Court of the State of Missouri, and acted as counsel for Frederick Seymour Barrington, the plaintiff in error in the above entitled cause. That he represented him in the trial court, in the proceedings in which he was convicted, and also in the Supreme Court of the State, and still represents the said plaintiff in error. That he has been counsel for the plaintiff in error since January 9, 1904, and during all that time has had the opportunity to know of the financial condition of the plaintiff in error, and knows that he is not possessed of any property or money, and is without the means of obtaining any money. That this affiant has represented the plaintiff in error throughout the proceedings without compensation

and that such costs as have been necessary to be paid, including the cost of the transcript of record upon this writ of error, have been supplied by strangers to the plaintiff in error as charitable contributions to enable him to maintain his defense and that such sums so supplied have now been completely exhausted in furthering this appeal.

WILFRED JONES.

Subscribed and sworn to before me this 27th day of Nov. 1906.

THOS. W. WINER,
Clerk of Circuit Court,
St. Louis Co., Mo.
Per J. A. TACKETT, *Depty. Clerk.*

[Seal of Court.]

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1906.

No. 493.

FREDERICK SEYMOUR BARRINGTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI.

STATE OF MISSOURI,
County of St. Louis, } *ss:*

Frederick Seymour Barrington, being first duly sworn, deposes and says: That he is the plaintiff in error named in the above entitled cause, and that he is now under sentence of death for the crime of murder in the first degree, whereof he has been adjudged guilty by the judgment in this cause. That this affiant is absolutely

without any property, money, or means of obtaining money for the purpose of defraying the costs of prosecuting the writ of error in this cause, his particular situation being as follows:

Since his arrest in this cause he has been without any sums of money to make his defense, and what small sum he had in his possession when so arrested was soon expended in sustaining himself while in jail, and that his counsel have been compelled to carry on his defense without any compensation whatever and are so continuing to do in this present appeal; and that he has no relatives or other persons on whom he could rely who are financialy able to bear this expense. Affiant further states that but for the friendly aid of strangers to himself, he would not have been able to procure the transcript of record required to be furnished upon this writ of error, the cost of which was defrayed by a charitable contribution made in this affiant's behalf.

FREDERICK SEYMOUR BARRINGTON.

Subscribed and sworn to before me this 27th day of Nov. 1906.

THOS. W. WINER,
Clerk of Circuit Court.
Per J. A. TACKETT, *Depty. Clerk.*

[Seal of Court.]

FILE COPY.

Office Supreme Court, U. S.
FILED.
MAR 30 1907
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 493.

FREDERICK SEYMOUR BARRINGTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI.

Brief for Plaintiff in Error in Answer to Motions to Dismiss or Affirm and to Advance.

WM. G. JOHNSON,
Counsel for Plaintiff in Error.

LAW REPORTER PRINTING CO., WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 493.

FREDERICK SEYMOUR BARRINGTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI.

Brief for Plaintiff in Error in Answer to Motions to Dismiss or Affirm and to Advance.

The motion to dismiss in this case is based upon the two claims that no Federal question was presented and decided in the courts below (Motion, pp. 1 and 2), and because no assignment of errors was annexed to and returned with the writ of error (Motion, p. 2).

The motion to dismiss does not involve the consideration of the case upon its merits but merely presents the question whether this court has jurisdiction of the case; that is, did the plaintiff in error set up and claim any right or protection under the Federal Constitution which was denied to him in the State court.

The plaintiff in error set up and claimed that, under the Federal Constitution, as well as the constitution and laws of Missouri, he was entitled to a fair and impartial trial and that he was entitled to be protected in that

right from the effects of local bias and prejudice against him, through the instrumentalities provided for that purpose by the State laws regulating his trial. That the State court in refusing that protection denied to him the fundamental right to a fair trial, to which, under the Federal Constitution, he was entitled; and that, also, it thereby denied to him the equal protection of the laws.

The plaintiff in error also set up and claimed that, under the Federal Constitution, as well as under the constitution of Missouri, he could not be compelled to give testimony against himself, and that this exemption and protection were denied to him by the court in permitting to be given in evidence against him alleged extra-judicial admissions, extorted from him while under arrest, by police officers of the State.

The specific character of the objections made by the plaintiff in error in the courts below and of the facts upon which they are based are clearly set forth in the dissenting opinion of Judge Valliant (Rec., pp. 687–696), in which he points out the circumstances of local bias and prejudice preventing the plaintiff in error from securing a fair trial, and also the circumstances attending his alleged admissions and the manner in which they were presented to the jury.

In discussing the conditions of local bias and prejudice existing against the plaintiff in error, Judge Valliant says by way of introduction (Rec., p. 688):

> "There are many reasons why, in my opinion, this judgment should not be affirmed, and those reasons *all combine to establish one proposition—that is, that this man did not have a fair trial.* Every step in the case, from his arrest to his trial, was attended with dramatic scenes that evinced no care to guard from unjust imputation the man who, howsoever unsavory his reputation and howsoever strongly involved in apparently incriminating circumstances, might, in fact, still be

innocent and who was in law presumed to be innocent."

The judge then details the principal facts thus (Rec., p. 689):

"When the dead body supposed to have been that of McCann was found, suspicion rested on the defendant, and public interest in him was again aroused; *the newspapers took up the subject*, and defendant's past life and character, as indicating a man capable of such a crime, became their theme *and the overshadowing sensation for the time being.* He was arrested, subjected to what the State's witness called 'a course of sweating,' and lodged in jail. During his preliminary examination, which took place at the courthouse at Clayton, the county seat of St. Louis County, a witness states that whenever the ruling of the examining magistrate on a question was in favor of the State *the audience applauded.* While he was in jail awaiting his trial, *the managers of one of the public theatres in St. Louis caused to be prepared for the stage a sensational drama, to which was given the name 'The Desperate Lord Barrington,'* and which dealt in a highly melodramatic style with the supposed life and character of the defendant, showing him in the most despicable light and *professing to portray on the stage the murder for which the defendant was being held.* When this drama was advertised the defendant petitioned the court to have the parties who were purposing to put it on the stage cited for contempt, but the court denied the petition and the play went on. After it had been enacted and the prejudicial effect which it was liable to have on the defendant's cause was shown to the court, the defendant again applied to the court to have it stopped, but the court again refused and the play went on. Afterwards the defendant moved the court for a change of venue on the ground of the prejudice of the inhabitants of St. Louis County, and at the

hearing introduced the testimony of a large number of citizens of the county to sustain the charge of prejudice; he introduced also numerous articles published in the principal newspapers of the city calculated to create prejudice of the strongest kind against the defendant, and he introduced evidence of the character of the melodrama above mentioned, enacted on the stage of the theater. But the court denied the application for a change of venue."

Further commenting upon this phase of the case, Judge Valliant says (Rec., pp. 693–4):

"I come now to a consideration of what I consider the gravest error in the case; that is, the refusal of the court to grant a change of venue.

"It will be impossible in the space which I am willing to take in this opinion to give anything like a detailed summary of the evidence that was presented to the court in support of this application. A large number of respectable witnesses of St. Louis County testified that there was a prejudice in the minds of the people of that county against the defendant; but the strongest evidence was the production of the newspapers which circulated in the county and which moulded public opinion. *Every strong, influential newspaper in the city published, day after day, columns of the most damaging statements concerning the man. These professed to have discovered and brought to light events in his past history connecting him with the most atrocious crimes in Europe before he came to America, and the despoiling of at least two young women under fictitious marriages in this country; then they took up what was said to be the evidence in this cause, and showed the defendant in the light of a cruel murderer of his best friend; there could be, according to the newspapers, no doubt of his guilt.* To such a high point in the public mind was the subject brought that the managers of one of the prominent theatres in the city caused *a most thrilling melo-*

drama entitled 'The Desperate Lord Barrington' to be prepared and put upon the stage, in which *this defendant was the chief villain and McCann his latest victim.* The play was advertised in all the prominent newspapers and in flaming posters. In the posters it was described as 'The acme of sensational melodrama—A play filled with thrills, throbs, laughter, and tears—It quickens the pulse beats, excites emotions, and stirs the better nature of every auditor—A play in which virtue wins and the villains get all that is coming to them.' The chief actor in the play was, in theatrical parlance, 'made up' *to look like the defendant, and imitated his voice and manner. According to the play the defendant was guilty of murdering the real Lord Barrington before he came to America,* and besides marrying several women, committed another murder in this country before he landed in St. Louis. *The scene of the climax of the drama was made to represent the rock quarry near Bonfils, in St. Louis County, where the dead body was found, and there the defendant and McCann appeared.*

. . . . . .

"In matters of the kind we are now considering the newspapers, especially when they are all agreed, mould public opinion. When these newspapers, with their exciting reports of alleged discoveries of inculpating evidence, and the character of this extraordinary theatre performance, were laid before the court on the motion for a change of venue, there was no necessity to call witnesses to testify that there was a prejudice in the minds of the people of St. Louis County against this man. No case has ever come under my notice where the evidence on this subject was so overwhelming. The inhabitants of the county, if they possessed that abhorrence to crime that is felt in all enlightened communities, could not, when subjected to these influences, have failed to have conceived a strong prejudice against this defendant."

The details of these newspaper attacks and of this theatrical performance will be found fully set forth in the record (Rec., pp. 78–255; 263–272; 336–354; 405–418).

Applications were duly made to the court to suppress these theatrical representations (Rec., pp. 156, 405–418) and for a change of venue, but were refused by the court (Rec., pp. 411, 418, 419, 421).

With reference to the "course of sweating" above referred to, by which the police officers sought to extort a confession from the prisoner, then in their custody, Judge Valliant says (Rec., p. 691):

> "When this man was arrested he was taken to the office of the chief of detectives, and from 9 o'clock in the evening until 2 o'clock in the morning he was subjected to what the *witness for the State* called 'a course of sweating.'
>
> "According to testimony in his behalf all the technical skill and ingenuity of the most experienced experts bore upon him to entrap him into saying something that would be evidence against himself. There was no threat—no promise—oh, no; in fact, the prisoner was expressly told that they would make no threat; they would make no promise; he was entirely free to answer or not as he might elect; yet free as he was, *the sweating process went on until at length his nerves gave way; he broke down and wept.* What he said on that occasion was given in evidence by the State, and the court in its instruction to the jury on that point said: 'What the defendant said *against himself*, if anything, *the law presumes to be true*, because said against himself. *What he said for himself you are not bound to believe*, because said in a statement or statements proved by the State, but you may believe it or disbelieve it, as is shown to be true or false, as shown by all the evidence in the case."
>
> . . . . . .
>
> "The jury could not have understood the instruction to mean anything else than that what

the prisoner said that might be construed as tending to incriminate himself was to be taken as gospel truth, while what he said which tends to exculpate him is to be received with caution and believed or disbelieved as the other evidence of the case might warrant."

The facts relating to this transaction are fully set forth in the record (Rec., pp. 425–490).

The constitution of Missouri, like the Federal Constitution, contains provisions designed to secure to a defendant, in a criminal case, a fair trial by an impartial jury, to protect him against being compelled to give testimony against himself, and to insure that no one shall be deprived of life, liberty or property without due process of law.

These provisions are as follows:

ARTICLE 2.

"Sec. 22. In criminal prosecutions the accused shall have the right to appear and defend in person or by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf; and a speedy public trial by an impartial jury of the county.

"Sec. 23. That no person shall be compelled to testify against himself in a criminal cause."

"Sec. 30. That no person shall be deprived of life, liberty or property without due process of law."

The statutes of Missouri, designed to give to a defendant the means of securing a fair and impartial trial in cases where local prejudice will tend to defeat it, contain these provisions (Revised Statutes of Missouri, 1899).

"Sec. 2572. Any criminal cause pending in any Circuit Court may be removed, by the order of

such court or the judge thereof, to the Circuit Court of another county in the same circuit whenever it shall appear in the manner hereinafter provided that the minds of the inhabitants of the county in which the cause is pending are so prejudiced against the defendant that a fair trial can not be had therein."

"Sec. 2574. Whenever it shall appear in the manner hereinafter provided that the inhabitants of the entire circuit are so prejudiced against the defendant that a fair trial can not be had therein, the cause shall, by order of the court or judge thereof, be removed to another circuit, in which such prejudice is not alleged to exist.

"Sec. 2575. Such order of removal as specified in the two preceding sections, shall be made on the application of the defendant or where the defendant is under the age of 16 years, on the application of the parent or guardian of such defendant, or if such defendant has no parent or guardian then on the application of any respectable citizen of the county where the cause is at issue."

Notwithstanding these provisions of constitutional law, the fundamental right of the defendant to a fair trial and that the prejudice existing against him was so vehement that "every strong, influential newspaper in the city published, day after day, columns of the most damaging statements concerning the man," and that a theatre found the public taste and feeling such as to make it profitable to prepare and present a drama representing the defendant as guilty of the crime charged, as well as of others equally heinous, the court denied to the plaintiff in error the right to a fair trial and the means provided by law for securing it in refusing to stop the theatrical performance and in refusing the defendant a change of venue (Rec., pp. 411, 418–19, 422).

It is respectfully submitted that in order to give this court jurisdiction to review by writ of error the judg-

ment of the highest court of a State, it is not necessary that some specific provision of the Federal Constitution shall have been set up. By the decisions of this court there are some fundamental and natural rights which are protected by the Federal Constitution, though not in terms mentioned in that instrument.

Thus, in Caldwell *vs.* Texas, 137, U. S., 692, Mr. Chief Justice Fuller says (pp. 697–8):

> "By the Fourteenth Amendment the powers of the States in dealing with crime within their borders are not limited, but no State can deprive particular persons or classes of persons of equal and *impartial* justice under the law. Law, in its regular course of administration through courts of justice, is due process, and when secured by the law of the State, the constitutional requisition is satisfied. 2 Kent Comm., 13. And due process is so secured by laws operating on all alike, and not subjecting the individual to the *arbitrary* exercise of the *powers* of government, *unrestrained by the established principles of private right and distributive justice.* Bank of Columbia *vs.* Okely, 4 Wheat., 235, 244. The power of the State must be exerted *within the limits of those principles,* and its exertion can not be sustained when special, *partial* and arbitrary."

In Holden *vs.* Hardy, 169 U. S., 366, Mr. Justice Brown, says (pp. 389–90):

> "This court has never attempted to define with precision the words 'due process of law,' nor is it necessary to do so in this case. It is sufficient to say that *there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard,* as that no man shall be condemned in his person or property without due notice and an opportunity of being heard in his defense."

In Brown *v.* New Jersey, 175 U. S., 172, Mr. Justice Brown says (p. 175):

> "The State has full control over the procedure in its courts, both in civil and criminal cases, subject only to the *qualification* that such procedure must *not work a denial of fundamental rights* or conflict with specific and applicable provisions of the Federal Constitution."

It is respectfully submitted that among the "fundamental rights" and the "immutable principles of justice which inhere in the very idea of free government" none can be more important than the right of a defendant, on trial for his life or liberty, to have a fair and impartial trial and the benefit of all the instrumentalities of the law designed to secure that right; and such, it is submitted, have been the rulings of this court. Thus, in Carter *v.* Texas, 177 U. S., 442, this court said, speaking through Mr. Justice Gray (p. 477):

> "Whenever by any action of a State, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States."

So, in the recent case of Kentucky *vs.* Powers, 201 U. S., 1, the clear indications of the court are that if the course alleged to have been pursued in the previous trials shall be persisted in and conviction result, this court will have jurisdiction upon writ of error to review that judgment. Yet neither of these cases, nor those relied upon in Carter *vs* Texas, proceeds upon the theory that the Constitution gives to a defendant the right to have, upon the grand

jury which indicts or the petit jury which tries, persons of the African race or of the same political opinions and affiliations with the defendants. What those cases condemn is the local bias and prejudice which the acts complained of disclosed, through which discriminations are or may be made against the defendants, and whereby they may be deprived of the fundamental right to a fair and impartial trial.

So, also, the right of a defendant, in a criminal prosecution, to be exempt from the obligation to give testimony against himself, while specifically protected by the Constitution in the United States courts, is still a matter of fundamental right, not to be denied in any court.

Thus in the case of Bram *vs.* United States, 168 U. S., 532, Mr. Justice White says (pp. 544–5):

> "In Brown *vs.* Walker, 161 U. S., 591, 596, the court, speaking through Mr. Justice Brown, said:
>
> 'The maxim *nemo tenetur seipsum accusare* had its origin in a protest against the inquisitorial and manifestly unjust methods of interrogating accused persons which has long obtained in the continental system, and, until the expulsion of the Stuarts from the British throne in 1688, and the erection of additional barriers for the protection of the people against the exercise of arbitrary power, was not uncommon even in England. . . . So deeply did the iniquities of the ancient system impress themselves upon the minds of the American colonists that the States, with one accord, made a denial of the right to question an accused person a part of their fundamental law, so that a maxim, which in England was a mere rule of evidence, became clothed in this country with tne impregnability of a constitutional enactment.'
>
> There can be no doubt that *long prior to our independence* the doctrine that one accused of crime *could not be compelled to testify against himself* had reached its full development in the

> common law, was there considered *as resting on the law of nature*, and was embedded in that system as one of its great and distinguishing attributes."

It is respectfully submitted that the record shows that a Federal question is involved in the judgment sought to be reviewed—namely, the fundamental right of the defendant to a fair trial and to be exempt from giving testimony against himself.

The defendant in error also assigns as a reason for dismissal for want of jurisdiction that no Federal question was presented to the said Circuit Court of St. Louis County or to the Supreme Court of the State of Missouri for determination in said cause (Motion, p. 2); yet in the "statement" accompanying said motion (pp. 5–6) it is admitted that the plaintiff in error did raise these questions in both courts.

These constitutional objections of the plaintiff in error were regularly made as shown by the record (Rec., pp. 419, 422, 619, 629, 631, 697, 698).

It is submitted that, under the decisions of this court, the Federal question is not required to be raised in any special or formal manner.

In Murray *vs.* Charleston, 96 U. S., 432. This court said (p. 441):

> "The jurisdiction of this court over the judgments of the highest courts of the States is not to be avoided by the mere absence of express reference to some provision of the Federal Constitution. . . . The form and mode in which the Federal question is raised in the State court is of minor importance, if, in fact, it was raised and decided.
>
> "In questions relating to our jurisdiction, undue importance is often attributed to the inquiries whether the pleadings in the State court expressly assert a right under the Federal Consti-

> tution. The true test is not whether the record exhibits an express statement that a Federal question was presented, but whether such a question was decided, and decided adversely to the Federal right. Everywhere in our decisions it has been held that we may review the judgments of a State court when the determination or judgment of that court could not have been given without deciding upon a right or authority claimed to exist under the Constitution, laws, or treaties of the United States, and deciding against that right. Very little importance has been attached to the inquiry whether the Federal question was formally raised."

It is the effect of the judgment upon such rights of the party as are protected by the Federal Constitution which is to be considered. If the defendant objects to the action of the court as against his constitutional rights, and the court decide against him, then a Federal question is presented and the jurisdiction of this court attaches. If the action of the State court be erroneous, then it constitutes a violation by the State of the Fourteenth Amendment.

In Chicago, Burlington & Quincy R. R. *vs.* Chicago, 166 U. S., 226, this court, through Mr. Justice Harlan, says (pp. 234–5):

> "But a State may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law regard must be had to substance, not to form. This court, referring to the Fourteenth Amendment, has said: 'Can a State make anything due process of law which, by its own legislation, it chooses to declare such?

> To affirm this is to hold that the prohibition to the States is of no avail, or has no application where the invasion of private rights is effected under the forms of State legislation.' Davidson *vs.* New Orleans, 96 U. S., 97, 102. The same question could be propounded, and the same answer should be made, in reference to judicial proceedings inconsistent with the requirement of due process of law. If compensation for private property taken for public use is an essential element of due process of law as ordained by the Fourteenth Amendment, then the final judgment of a State court, under the authority of which the property is in fact taken, is to be deemed the act of the State within the meaning of that amendment."

In Carter *vs.* Texas, 177 U. S., 442, the court says (p. 477):

> "But the question whether a right or privilege, claimed under the Constitution or laws of the United States, was distinctly and sufficiently pleaded and brought to the notice of a State court, is itself a Federal question, in the decision of which this court, on writ of error, is not concluded by the view taken by the highest court of the State."

It is also assigned as ground for dismissal of the writ of error that no assignment of errors was returned with the writ of error (Motion, p. 2), and the case of Rowe *vs.* Phelps, 152 U. S., 87, is relied upon.

In that case there was no motion to dismiss, the case having been argued and submitted on the merits, and the writ of error was dismissed because there was no assignment of errors sent up with the record and no specification of the errors relied upon in the brief on the merits as required by the rule, and further because there was no such plain error not assigned or specified as called upon the court to exercise its option to review the questions involved.

It is settled by the rules, practice and decisions of this court that an assignment of errors made part of the brief for argument under rule 21 is sufficient.

In School District of Ackley *vs.* Hall, 106 U. S., 428–9, this court said:

> "A failure to annex to or return with a writ of error an assignment of errors, as required by sect. 997 of the Revised Statutes, is no ground for dismissal for want of jurisdiction. If an assignment is filed in accordance with the requirements of par. 4, rule 21, it will ordinarily be enough."

So also in Gumbel *vs.* Pitkin, 113 U. S., 546–7, the court says:

> "A motion is made to dismiss the writ of error in this case on the following grounds:
>
> . . . . . .
>
> "2. No assignment of errors was transmitted with the record, as required by the rules of the court and by § 997 Rev. Stat.
>
> . . . . . .
>
> "The second ground is met by the decision of this court in the case of the School District of Ackley *vs.* Hall, 106 U. S., 428, where it is said that a writ of error will not be dismissed for want of jurisdiction by reason of a failure to annex thereto or return therewith an assignment of errors pursuant to the requirements of § 997, Rev. Stat. Nor does rule 8 require a copy of assignment of errors in the transcript when no such assignment was filed in the court below."

Defendant in error also moves to affirm the judgment on the ground that the "question on which the jurisdiction depends is so frivolous as not to need further argument" (Motion, p. 17). It is respectfully submitted that if, as contended by plaintiff in error, a Federal question is presented, the facts that two of the judges of the supreme court of Missouri dissented from the judgment

Rec., p. 686) and that the chief justice of that court, who concurred in the judgment of affirmance, allowed the writ of error is sufficient answer to the suggestion that the question is frivolous.

The Motion to Advance.

A motion is also made to advance this cause in the event that the motion to dismiss be not granted. As the motion to advance was only noticed in time for submission on April 1, 1907, and as counsel is advised that this court will not hear arguments after April it is respectfully submitted that the case be not advanced for argument at this term, as the time would be insufficient for the proper preparation for argument.

It is respectfully submitted that the motions to dismiss or affirm should both be denied.

WM. G. JOHNSON,
Counsel for Plaintiff in Error.

IN THE

No. 493.

Supreme Court of the United States.

OCTOBER TERM, 1906.

FREDERICK SEYMOUR BARRINGTON, Plaintiff in Error,

vs.

THE STATE OF MISSOURI, Defendant in Error.

MOTION OF THE DEFENDANT IN ERROR TO DISMISS THE WRIT OF ERROR FOR WANT OF JURISDICTION TO HEAR AND DETERMINE THE SAME AND TO AFFIRM THE JUDGMENT OF THE SUPREME COURT OF MISSOURI.

And now comes the State of Missouri, the defendant in error in the above entitled cause, by its counsel, Herbert S. Hadley, the Attorney-General of the State of Missouri, and respectfully moves the Court to dismiss the writ of error heretofore granted and issued in said cause, for the following reasons, to wit:

I.

Because it is apparent upon the record here presented in said cause, that no Federal question was involved in the pleadings, trial proceedings and determination of said cause, either in the circuit court of St. Louis county or in the Supreme Court of the State of Missouri.

II.

Because it is apparent upon the record that no Federal question was presented to the said circuit court of St. Louis county or to the Supreme Court of the State of Missouri for determination in said cause.

III.

Because it is apparent from the record that no decision of any Federal question was necessarily involved in the rulings, findings, opinions, judgments and decrees, either of the circuit court of St. Louis county, or of the Supreme Court of the State of Missouri in said cause.

IV.

Because it is apparent from the record in said cause, that neither the validity of any treaty or statute, or any authority exercised under the United States, was in any wise drawn in question in said cause, and there was no decision, or judgment against the validity of such treaty, statute or authority.

V.

Because it is apparent from the record that neither the validity of any statute of the State of Missouri or of any authority exercised by or under the State of Missouri was drawn in question in said cause on the ground of being repugnant to the Constitution, treaties or laws of the United States, and there was no decision or judgment in said cause in favor of any such validity.

VI.

Because it is apparent from the record that in the pleadings, rulings, findings, opinions, judgments and decrees of the said circuit court of St. Louis county, or of the Supreme Court of the State of Missouri, in said cause, there is no decision against any title, right, privilege or immunity, specially set up or claimed by the plaintiff in error under the Constitution or any treaty, statute of or commission held or authority exercised under the United States.

VII.

There was no assignment of errors filed with the petition for writ of error or annexed to and returned with the writ of error to this Court, as required by Section 997, U. S. Comp. Stat. 1901.

MOTION TO AFFIRM.

Defendant in error further moves the Court that if the writ of error shall not be dismissed, that the judgment of the Supreme Court of the State of Missouri be affirmed on the ground that, although in the opinion of this Court the record may show that this Court has jurisdiction, it is manifest that the said writ of error was taken for delay only and that the question on which the jurisdiction depends is so frivolous as not to need further argument.

HERBERT S. HADLEY,
Attorney-General of Missouri,
JOHN KENNISH,
Ass't Attorney-General,
For the State.

STATEMENT.

At the September term, 1903, of the circuit court of St. Louis county, and State of Missouri, an indictment for murder in the first degree was returned against the plaintiff in error, Frederick Seymour Barrington, charging him with having killed one James P. McCann at said county on the 18th day of June, 1903. The indictment contained five counts and charged the offense in different forms to meet the evidence as it might develop at the trial. Several dilatory pleas were filed by the plaintiff in error and overruled by the court, to which rulings exceptions were duly saved at the time. We shall refer to those pleas and parts of the record, and only those in which a Federal question was sought to be presented to the court for its decision.

Plaintiff in error filed a demurrer to the indictment, in the sixth ground of which is the following: "6. Because of the inconsistency, multiplicity and repugnancy of said counts, the defendant is being proceeded against in violation of the State and Federal guarantee of due process of law and in violation of his constitutional right to be specifically informed of the nature and cause of the accusation against him." The demurrer was overruled.

A motion to quash the indictment and the several counts thereof was filed by plaintiff in error. The sixth ground of said motion was leveled against the entire indictment, and two of the reasons therein were as follows:

> "6th: Because of the inconsistency, multiplicity and repugnancy of said counts, the defendant is being proceeded against in violation of the State and Federal guarantee of due process of law and in violation of his constitutional right to be specifically informed of the nature and cause of the accusation against him."
>
> "7th. Because the names of the witnesses on the part of the State are not endorsed on said indictment and in support of this ground to quash, defendant states:"

(A statement of considerable length here follows as part of the 7th reason, the purport of which is that the prosecuting attorney of St. Louis county having knowledge of certain witnesses for the State at the time the indictment was returned into court, intentionally refrained from endorsing the names of such witnesses on the indictment for the purpose of preventing the defendant from making due preparation to meet their evidence at the trial.)

It is further alleged in the 7th reason of the sixth ground of the motion to quash that the defendant has a constitutional right to have the names of the witnesses who are to appear against him endorsed on the indictment; that the defendant is a subject of the King of Great Britain, "and as such is entitled under and by virtue of the treaties now existing between the government of the United States and the government of Great Britain, as well as under the laws and the Constitution of the Federal government, and also under the laws of nations, to a fair and impartial trial of said cause, to be fully informed of the nature and cause of the accusation against him, and to know who are the witnesses against him in said cause in order that he may have a fair trial thereof," etc.

After the court had overruled the motion to quash the indictment, a plea in abatement was filed by the plaintiff in error, alleging substantially the same facts as set forth in the 7th reason aforesaid of the 6th ground of said motion to quash. The court having heard the evidence on the plea in abatement, found that the defendant was a native citizen and subject of Great Britain, but found all other issues on said plea against the defendant.

Thereafter plaintiff in error filed an application for a change of venue from St. Louis county (which county constitutes one judicial circuit), on the ground of the prejudice of the inhabitants of said county against him. In said application, it is again alleged that the defendant is a citizen and subject of the King of Great Britain and that as such citizen and by virtue of the treaties now existing between the British government and the United States, as well as under the laws and Constitution of the Federal government and the laws of Nations, he is entitled to a fair and impartial trial, and that he cannot have a fair and impartial trial in said county. After hearing the testimony of forty-one witnesses in support of said application, and thirty-seven against it, the same was overruled by the court.

The defendant was formally arraigned upon said indictment, entered a plea of not guilty thereto, was put upon his trial and on

the 5th day of March, 1904, was convicted of murder in the first degree. Motions for a new trial and in arrest of judgment were filed in due time and by the court overruled. Judgment was then rendered by the court and sentence passed in accordance with the verdict.

The adverse rulings of the court on the motion to quash, plea in abatement and application for change of venue were preserved in the motion for a new trial, and were also, together with the action of the court in overruling the demurrer to the indictment, made grounds of the motion in arrest of judgment.

The plaintiff in error appealed from the judgment to the Supreme Court of the State, and Division No. 2 of said Court (which division has appellate jurisdiction of criminal causes) affirmed the judgment of the trial court. In the opinion of the Court so affirming the judgment, no Federal question was passed upon or referred to.

A motion for a rehearing was then filed in said Division No. 2, in which motion certain Federal questions were sought to be presented. The Court overruled this motion, but delivered no opinion thereon. A motion was then filed by the plaintiff in error for the transfer of said cause from said Division No. 2 to the Court en Banc, in which motion certain Federal questions were again set forth for the consideration of the said Court en Banc. This motion was sustained and the cause was transferred as prayed. Upon a hearing in the Court en Banc, the opinion of Division No. 2 was adopted as the opinion of the Court en Banc, and the judgment was again affirmed. A motion for rehearing was then filed in the Court en Banc, in which certain Federal questions were sought to be raised. This motion was overruled, without opinion, and plaintiff in error prosecuted his appeal by writ of error to this Court, but no assignment of errors was annexed to and returned with the writ of errors, as required by Section 997, Com. Stat., 1901.

The defendant in error contends that as the Supreme Court of the State did not pass upon any Federal question in its decision of this cause, the record of the trial court alone must be looked to for the purpose of ascertaining whether such Federal question was involved in the determination of this case as will sustain the jurisdiction of this Court. It is further contended that such a question is not presented by the record of the trial court, but in case a Federal question was raised it is manifestly without merit and made for the purpose of delay.

BRIEF AND ARGUMENT.

I.

The jurisdiction of this Court to review and re-examine a judgment of the highest court of a State is prescribed by section 709 of the Revised Statutes of the United States, 1901. Under this section there are three classes of cases only in which jurisdiction is given to this court: First, where a final judgment or decision in the highest court of the State draws in question the validity of a treaty or statute or an authority exercised under the United States, and the decision is against their validity; second, cases where such judgment or decree draws in question the validity of a statute of or an authority exercised under any State on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision is in favor of their validity; third, cases where some title, right, privilege or immunity is claimed under the Constitution or any treaty or statute of or commission held or authority exercised under the United States and the decision is against the title, right, privilege or immunity specially set up and claimed by either party under such Constitution, treaty, statute, commission or authority.

Section 709, U. S. Comp. St. 1901.

Hughes' Federal Procedure, p. 485.

Plaintiff in error has not contended that he has been denied any right which would bring this case under either the first or second of the foregoing classes, and if this Court has jurisdiction to re-examine and review the judgment in this case, it must be because a Federal question is presented by the record under the third class of cases mentioned in said section 709.

II.

The title, right, privilege or immunity claimed by the plaintiff in error under the Constitution or any treaty or statute of or

commission held or authority exercised under the United States, in order to present a Federal question to sustain the jurisdiction of this Court, must have been specially set up or claimed by him in the trial court. It is not sufficient that such claim was made for the first time in the appellate court, and while an exception to this rule exists in cases in which the Federal question is first raised in the appellate court and such court takes cognizance of the question thus raised and decides it adversely to plaintiff in error, yet in the case at bar it appears from the record that in the decision of this case no Federal question was passed upon by the Supreme Court of the State, and, therefore, the general rule of law heretofore stated applies in this case.

This Court in the case of Spies vs. Illinois, 123 U. S. 131, said:

> "To give us jurisdiction under section 709 of the Revised Statutes because of the denial by a state court of any title, right, privilege or immunity claimed under the Constitution, or any treaty or statute of the United States, it must appear on the record that such title, right privilege or immunity was 'specially set up or claimed' at the proper time in the proper way. To be reviewable here the decision must be against the right *so set up or claimed*. As the Supreme Court of the State was reviewing the decision of the trial court, it must appear that the claim was made in that court, because the Supreme Court was only authorized to review the judgment for errors committed there, and we can do no more. This is not, as seemed to be supposed by one of the counsel for the petitioners, a question of a waiver of a right under the Constitution, laws or treaties of the United States, but a question of claim. If the right was not set up or claimed in the proper court below, the judgment of the highest court of the State in the action is conclusive, so far as the right of review here is concerned."

Laytor vs. Missouri, 187 U. S. 356.

Jacobi vs. Alabama, 187 U. S. 133.

Mollet vs. North Carolina, 181 U. S. 589.

Dreyer vs. Illinois, 187 U. S. 71.

Brooks vs. Missouri, 124 U. S. 394.

Baldwin vs. Kansas, 129 U. S. 2.

The only title, right, privilege or immunity set up or claimed by plaintiff in error in the trial court under the Constitution or any treaty or statute of or commission held or authority exercised under the United States were those set forth in the demurrer, to the indictment, in the motion to quash, in the plea in abatement and in the application for a change of venue. Assuming that the claims so made were "specially set up and claimed" by the plaintiff in error, and that the rulings of the court against such claims were properly preserved for review in the motion for a new trial and in the motion in arrest of judgment, it remains to be considered whether a Federal question was thus raised in the record which will sustain the jurisdiction of this Court.

III.

In each of said pleadings, except the demurrer, plaintiff in error alleges that he is a citizen and subject of the King of Great Britain, and on the hearing of the plea in abatement, the court made a finding of that fact. The fact that the plaintiff in error may have been a subject of the King of Great Britain does not affect his rights in so far as the existence of a Federal question in this case is concerned.

Under the provisions of section 709, *supra*, the question of citizenship is immaterial as affecting the jurisdiction of this Court.

French vs. Hopkins, 124 U. S. 524.

In Hughes' Federal Procedure, page 485, construing said section 709, the author says:

> "It is manifest, under this statute, that the character of the question decides the right of review, and that the citizenship of the parties has nothing to do with it."

In the case of Spies vs. Illinois, *supra*, Fielden, one of the defendants, was a British subject and as such asserted rights by virtue of a treaty between the British government and the government of the United States, and on that subject, this court said:

> "As to the suggestion by counsel for the petitioners, Spies and Fielden—Spies having been born in Germany and Fielden in Great Britain—that they have been denied by the decision of the court below rights guaranteed to them by treaties between the United States and their

> respective countries, it is sufficient to say that no such questions were made and decided in either of the courts below, and they cannot be raised in this court for the first time. Besides, we have not been referred to any treaty, neither are we aware of any, under which such a question could be raised."

In the case of McDonald et al. vs. The State, 80 Wis., 407, one of the defendants being a British subject, and having asserted certain treaty rights by reason of that fact, the court said:

> "Plaintiffs in error must be content with the same measure of justice which would have been meted to them under the same procedure had they been citizens of this State."

State vs. Neidekier, 184 Mo. 211.

State vs. Rudolph, 187 Mo. 67.

Neither does the question of international law enter into the question of the jurisdiction of this court, for it is general law that aliens are subject to the law of the territory where the crime is committed.

Wharton on Conflict of Laws, sec. 819.

II Cyc., 106.

2 Am. & Eng. Ency. of Law, 65-6.

State vs. Neidekier, 184 Mo. 211.

State vs. Rudolph, 187 Mo. 67.

While the prosecution of an alien for an alleged crime may become the subject of diplomatic negotiations between the governments interested, courts do not take cognizance of the governmental allegiance of the accused.

People vs. McLeod, 1 Hill (N. Y.) 377.

37 Am. Dec. 328.

IV.

One ground of the demurrer to the indictment is as follows:

> "Because of the inconsistency, multiplicity and repugnancy of said counts, the defendant is being proceeded against in violation of the State and Federal guarantee of due process of law and in violation of his constitutional right to be especially informed of the nature and cause of the accusation against him."

The action of the court in overruling the demurrer and holding the indictment sufficient, does not present a Federal question.

In the case of Howard vs. Fleming, 191 U. S. 126, this court said:

> "The highest court of the State has affirmed the validity of the proceedings in that trial, and we may not interfere with its judgment unless some right guaranteed by the Federal Constitution was denied and the proper steps taken to preserve for our consideration the question of that denial.
>
> "The first contention demanding notice is that the indictment charged no crime. * * * In other words, the Supreme Court decided that a conspiracy to defraud was a crime punishable under the laws of the State, and that the indictment sufficiently charged the offense. Whether there be such an offense is not a Federal question, and the decision of the Supreme Court is conclusive upon the matter. Neither are we at liberty to inquire whether the indictment sufficiently charged the offense. Caldwell vs. Texas, 137 U. S. 692, 698; Davis vs. Texas, 139 U. S. 651, 653; Bergemann vs. Backer, 157 U. S. 655."

V.

In the motion to quash the indictment and also in the plea in abatement, plaintiff in error alleged that the prosecuting attorney purposely refrained from endorsing on the indictment the names of certain witnesses to be used against plaintiff in error at the trial; that as a subject of the King of Great Britain, under and by virtue of treaties, as well as under the laws and Constitution

of the Federal government and the laws of Nations, and the laws of the State of Missouri, he was entitled to a fair and impartial trial; to be fully informed of the nature and cause of the accusation against him, and to know who are the witnesses against him, etc.

By the action of the court in overruling the said motion and plea, it was contended by plaintiff in error that he was denied the rights therein asserted and that a Federal question was thus presented by the record. The guarantees in criminal prosecutions of the rights of the accused to a trial by an impartial jury, to be informed of the nature and cause of the accusation against him, and to be confronted with the witnesses against him, are found in Article VI of the Amendments to the Federal Constitution. It is settled law that "the first ten amendments to the Federal Constitution contain no restrictions on the powers of the State, but were intended to operate solely on the Federal government."

Brown vs. New Jersey, 175 U. S. 172.
Barron vs. Baltimore, 7 Pet. 243.
Fox vs. Ohio, 5 How. 410.
Twitchell vs. Commonwealth, 7 Wall. 321.
United States vs. Cruikshank, 82 U. S. 542, 552.
Spies vs. Illinois, 123 U. S. 131.
Davis vs. Texas, 139 U. S. 651.

VI.

It will be observed that the rights, privileges and immunities claimed by the plaintiff in error in said motion to quash, and plea in abatement are all based upon the alleged act of the prosecuting attorney in intentionally refraining from endorsing the names of certain witnesses on the indictment.

While the Federal and State Constitutions in cases within their respective jurisdictions, guarantee to the accused the right to be confronted with the witnesses against him, the accused has no constitutional right to be notified in advance who those witnesses shall be.

The accused was not possessed of such right under the common law.

In 3 Wigmore on Evidence, section 1850, the common law practice is stated as follows:

"In the orthodox common law practice no notice was required to be given to the accused, in any criminal prosecution, of the name or testimony of any witnesses intended to be produced on behalf of the prosecution.

1873, Christiancy, C. J., in Hill vs. People, 26 Mich. 496, 497:

" 'The common law did not require the names of any of the witnesses to be indorsed upon the indictment for any purpose connected with the trial. But as the witnesses who were to testify before the grand jury were sworn in open court before they were sent to the grand jury, a list of the witnesses intended to be examined before that jury was required to be indorsed on the back of the bill as drawn up to be laid before them. This was required for two purposes: first, that the crier or other officer whose duty it was to swear the witness might know who were to be called and sworn and that he might certify to their being sworn, which he did by adding after their names 'sworn in court;' and, second, that the grand jury might know what witness to call and who had been sworn. In this mode, it is true, a defendant indicted for a misdemeanor incidentally got the benefit of a list of the witnesses who had testified before the grand jury, because in cases of misdemeanor he was entitled to a copy of the indictment. But in cases of felony he failed to receive even this incidental benefit, as in such cases he was not entitled to a copy of the indictment.'

"It follows that, apart from the express or implied requiremet of some statute, there is at common law no rule of evidence excluding witnesses whose names have not been furnished to the accused; nor is there any rule of preliminary procedure permitting the accused to obtain such a list by motion before trial."

1 Bishop's New Crim. Proc. sec. 869a.

Ballard vs. State, 19 Neb. 609.

The right of the accused as to the endorsement of names of the witnesses on the indictment is statutory, and in the State of Missouri such endorsement is provided for in section 2517, R. S., 1899, in which statute the right of the State to use other witnesses

not so endorsed is also recognized. It is manifest that if the right upon which plaintiff in error bases his claim of constitutional right is purely statutory, no Federal question could arise out of a denial of such right, and the decision of the Supreme Court of Missouri that he had been tried in accordance with the procedure provided for by the statutes of that State is final.

Brooks vs. Missouri, 124 U. S. 394.

VII.

In his application for a change of venue, plaintiff in error alleges that he is a citizen and subject of the King of Great Britain, and as such by virtue of the treaties between this government and the British government, as well as under the laws and Constitution of the Federal government, and also under the laws of Nations, is entitled to a fair and impartial trial, and that a fair and impartial trial cannot be had in said circuit, and that under said treaties, laws of Nations and constitutional rights, as well as under the laws of this State, he is entitled to a removal of this cause to some other circuit and county. It is also alleged in said application for a change of venue that the clause in section 2576 of the R. S. of Mo., 1899, providing that the court or judge, in vacation, shall fix the number of witnesses for which the State or county shall be liable in the hearing of an application for a change of venue, is unconstitutional and void in that it violates the law of Nations, the statutes aforesaid and the Federal Constitution and the Fourteenth Amendment thereof. As the record fails to show that any limit to the number of witnesses for which the State would be liable was fixed by the court under the provisions of said statute, and as no exception is shown to have been taken to any action of the court therein, the question of the constitutionality of said clause of the statute was not before the Supreme Court of the State for review, and, therefore, not before this court.

Spies vs. Illinois, *supra.*

The defendant in a criminal case has no constitutional right to a change of venue. In the case of State vs. Thompson, 141 Mo. 408, the Court said:

> "No doubt exists of the power of the State to prescribe the terms and conditions upon which changes of

venue may be granted. There is no constitutional right to such a change. The State very wisely requires the prosecution to be had in the county in which the offense is committed, unless the court is satisfied by the evidence that a fair trial can not be had therein."

State ex rel. vs. Wofford, 119 Mo. 375.

It is provided by the statutes of the State of Missouri that in criminal cases the defendant shall be entitled to a change of venue if the minds of the inhabitants of the county are so prejudiced against him that he cannot have a fair and impartial trial. It is for the court to determine from the evidence whether or not such prejudice exists. And the denial of the application for a change of venue is a matter of practice and procedure of the State court.

"Questions relating to matters of pleading and practice under the laws of a State involve no Federal question."

Taylor's Juris. & Proc. of the U. S. Sup. Ct., sec. 219.

Re. Robertson, 156 U. S. 185.

Brooks vs. Missouri, 124 U. S. 394.

Caldwell vs. Texas, 137 U. S. 698.

Davis vs. Texas, 139 U. S. 651.

VIII.

In the rulings of the trial court on the demurrer, motion to quash the indictment, plea in abatement and application for a change of venue, there was clearly no denial of fundamental rights, no denial of due process of law or the equal protection of the laws to the plaintiff in error presenting a Federal question under the Fourteenth Amendment of the Federal Constitution.

In Guthrie's "The Fourteenth Amendment to the Constitution of the United States," at page 70, it is said:

"It is important to appreciate that 'due process of law' is process according to the system of law obtaining in each State, and not according to any general law of the United States. In ascertaining and determining such law, regard should be had to the usages, public policy and modes of proceeding existing in the respective States,

and these should control unless shown to be wholly unsuited to the subject matter. No violation of due process of law is involved when the law is executed according to the customary forms and established usages of the particular State, or in subordination to the principles which underlie them. As was said in a leading case: 'The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there may be a right of trial by jury, and on the other side no such right. Each State prescribed its own modes of judicial proceeding.' "

And in "The Fourteenth Amendment" by Brannock, at page 282, that author says:

> "It is well settled that a regular trial, criminal or civil, in the due and orderly course of State law, is due process under the Fourteenth Amendment, even though there be error in the proceeding, which would reverse it on appeal to a state court, provided the judgment be not utterly void."

IX.

In the case of Lewis vs. Missouri, 101 U. S., at page 31, construing the "equal protection of the laws" clause of the Fourteenth Amendment this Court said:

> "We might go still further and say, with undoubted truth, that there is nothing in the Constitution to prevent any State from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example, should see fit to adopt the civil law and its methods of procedure for New York City and the surrounding counties, and the common law and its method of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the Fourteenth Amendment, be a denial to any person of the equal protection of the laws. If every person residing or being in either portion of the State should be accorded the equal protection of the laws

prevailing there, he could not justly complain of a violation of the clause referred to. For, as before said, it has respect to persons and classes of persons. It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances."

The record in this case shows that plaintiff in error was tried and convicted according to the laws of the State of Missouri applicable alike to all charged with crime within her borders; that he was denied no right, privilege or immunity claimed under the Constitution, or any treaty or statute of or commission held or authority exercised under the United States; that no federal question is presented to authorize and sustain the jurisdiction of this court, and the defendant in error respectfully asks that the writ of error be dismissed.

X

The writ of error in this case should be dismissed for the reason that no assignment of errors was filed with the petition for the writ of error herein or annexed to and returned with the writ of error to this Court, and no plain error is apparent upon the face of the record.

Section 997, R. S. Comp. Stat. 1901.
Rule 21, Sec. 4, Rules of this Court.
Rowe vs. Phillips, 152 U. S. 87.
Lloyd vs. Chapman, 93 Fed. Rep. 599.

XI.

Although, in the opinion of this Court, the record may show that this Court has jurisdiction, it is manifest that the writ of error was taken for delay only, and that the question on which the jurisdiction depends is so frivolous as not to need further argument, and, therefore, the judgment of the Supreme Court of the State of Missouri should be affirmed.

Douglas vs. Wallace, 161 U. S. 346.
Chanute City vs. Trader, 132 U. S. 210.
Whitney vs. Cook, 99 U. S. 607.
Hinckley vs. Morton, 103 U. S. 764.
Micas vs. Williams, 104 U. S. 556.

It is therefore respectfully submitted by the defendant in error that the writ of error herein should be dismissed for want of jurisdiction, or if this Court has jurisdiction that the judgment of the Supreme Court of the State of Missouri should be affirmed.

HERBERT S. HADLEY, Attorney-General of Missouri,
JOHN KENNISH, Assistant Attorney-General,
For Defendant in Eror.

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No. 493.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1906.

FREDERICK SEYMOUR BARRINGTON, Plaintiff in Error,

vs.

THE STATE OF MISSOURI, Defendant in Error.

REPLY BRIEF FOR DEFENDANT IN ERROR ON MOTION TO DISMISS OR AFFIRM.

HERBERT S. HADLEY,
Attorney-General,
JOHN KENNISH,
Ass't Attorney-General.
For Defendant in Error.

THE HUGH STEPHENS PRTG. CO., JEFFERSON CITY.

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REPLY BRIEF FOR DEFENDANT IN ERROR ON MOTION TO DISMISS OR AFFIRM.

As counsel for the plaintiff in error in his brief in answer to the motion to dismiss or affirm makes the contention that certain Federal questions were raised in the trial of this case which were not discussed or considered in our original brief in support of the motion to dismiss or affirm, we ask leave to present this reply brief. These questions were not discussed in our original brief because no assignment of error were filed as required by Sec. 997, Revised Statutes, and it is our contention that the record does not justify the claim made by the counsel for the plaintiff in error that they present a Federal question.

I.

It is contended by the plaintiff in error (Brief p. 2) that he "set up and claimed that under the Federal Constitution, as well as under the Constitution of Missouri,

he could not be compelled to give testimony against himself, and that this exemption and protection were denied to him by the court in permitting to be given in evidence against him alleged extra judicial admissions, extorted from him while under arrest, by police officers of the State." Counsel for the plaintiff in error then refer to and quote from a decision of Judge Valliant dissenting from the decision and opinion of the Supreme Court of Missouri in reference to the admission by the trial court of the statements made by him after his arrest. (Brief p. 6.) And counsel for the plaintiff in error (Brief p. 7) then states:

> "The facts relating to this transaction (namely, the circumstances under which these statements were made by the defendant) are fully set-forth in the record. (Rec. pp. 425-490.)
>
> The Constitution of Missouri, like the Federal Constitution, contains provisions designed to secure to a defendant, in a criminal case, a fair trial by an impartial jury, to protect him against being compelled to give testimony against himself, and to insure that no one shall be deprived of life, liberty or property without due process of law."

As this contention was not referred to in the original brief filed for the defendant in error in support of the motion to dismiss and affirm, we now desire to submit the following observations in reference to this contention.

The testimony showing the circumstances under which the statements made by the plaintiff in error which were admitted in evidence are to be found, as stated by counsel for plaintiff in error on pages 425 to

490 of the printed record. An examination of that portion of the record fails to disclose that counsel for the plaintiff in error objected to the introduction of this testimony on the ground that any rights, privileges or immunities of the defendant under the Constitution and laws of the United States were thereby violated.

On page 427 of the record, the following objection was made when counsel for the State offered in evidence certain articles taken from the trunk of the defendant:

> "We object to his evidence upon the ground that it was taken without due process of law—taken in violation of the State Constitution which prohibits the making of a man a witness against himself, and was taken without the voluntary consent of the defendant."

This objection was not passed upon by the court at that time, and the witness was withdrawn. When the trunk and its contents were again offered in evidence (Rec. pp. 428, 429) no objection was made by counsel for the plaintiff in error which presented in any way any question under the Constitution of the State of Missouri or the Constitution or laws of the United States. The objection at that time was based entirely upon the ground of irrelevancy and immateriality and the fact that proper foundation had not been laid in the identification of the trunk (Rec. pp. 428, 429, 431).

When the State sought to offer in evidence the statements made by the defendant following his arrest, the court first excluded the jury and heard the testimony of the persons present at the time for the purpose of determining the competency of the testimony (Rec. p. 433). After an examination of a number of witnesses who detailed fully the circumstances under which the statements were made by the defendant following his arrest, all

being to the effect that the statements were made voluntarily by the defendant, without any force, compulsion or threats being used, (Rec. pp. 433 to 490) his counsel then offered the following objection; (Rec. p. 490).

> "Now we object to the second confession, because there is no foundation laid for it and because it was voluntary. We object to everything, but while he was under the first arrest. I do not object to that going in, but all this sideshow down at the police station, I object to it and all these other statements."

This objection was overruled, and exceptions saved. These are the only portions of the record in which it is claimed by plaintiff in error that any objections were made in the trial of this case to the introduction of statements made by the defendant. As none of these objections referred in any way to any right, privilege or immunity of the plaintiff in error under the Federal Constitution, it is submitted that no question is presented by the ruling of the trial court in admitting this testimony which can be made the basis of a contention that this Court now has jurisdiction. While the Missouri Constitution provides (Art. II, Sec. 23) "that no person shall be compelled to testify against himself in a criminal case," it was for the Supreme Court of Missouri to say whether that privilege which belonged to the defendant under its provisions had been violated by the rulings of the trial court, in case such an objection had been properly made at the time. The Supreme Court of the State of Missouri has held that the trial court in admitting this testimony did not commit error and did not act contrary to the constitutional guarantee secured by the provisions of

the Missouri Constitution. Its rulings upon that proposition are not subject to review in this court.

Jackson vs. Lamphire, 3 Pet. 280.

Pittsburg Ry. Co. vs. Backus, 154 U. S. 425.

Murray vs. Louisiana, 163 U. S. 101.

Missouri vs. Harris, 144 U. S. 210.

After the decision of the Supreme Court en Banc affirming the judgment of the circuit court of St. Louis county and denying to the plaintiff in error a new trial, he filed a motion for rehearing (Rec. pp. 697-8). In this motion for rehearing is the only contention that we have been able to find in which it is asserted by plaintiff in error that through the admission of the statements made by him after his arrest, any right, privilege or immunities secured to him under the Constitution of the United States was violated. The third ground of that motion for rehearing (Rec. p. 698) is as follows:

> "Because counsel for appellant, through neglect and inadvertence, failed to call the attention of the court to the proposition that the cross-examination of appellant complained of as 'improper' and the admission as evidence of statements or 'confessions' made by appellant while in the 'sweat box' of the St. Louis police department, was in direct violation of the Constitution of the United States.
>
> Art. V., amendments to the Const. of U. S. in that it compelled the appellant to become a witness against himself."

Counsel for the plaintiff in error thus concede that this testimony was not objected to at the time it was offered on the ground that its admission would be in

violation of the Constitution of the United States. The only objection was upon the ground that the admission of this evidence was "improper." Article V of the Amendments to the Federal Constitution, which provides that no person shall be compelled "in any criminal case to be a witness against himself," does not operate as a "restriction on the powers of the State, but was intended to operate solely on the Federal Government."

Brown vs. New Jersey, 175 U. S. 172.

Barron vs. Baltimore, 70 Pet. 243.

Further, as this motion for rehearing was overruled by the Supreme Court of Missouri without any opinion being written thereon, or without any reference being made to this contention, no Federal question was thereby raised which is subject to review in this Court.

Bushnell vs. Crook Min. & Smelting Co., 148 U. S. 690.

Pim vs. St. Louis, 165 U. S. 273.

Capital National Bank vs. First National Bank, 172 U. S. 425.

Turner vs. Richardson, 180 U. S. 87.

It is further to be noted that nothing is said, either in the opinion and decision of the Supreme Court of Missouri, or in the dissenting opinion written by Judge Valliant, in reference to the proposition that the admission of the statements made by the defendant following his arrest in any way violated any rights, privileges or immunities that he enjoyed under the Constitution or laws of the United States or that thereby he was deprived of due process of law. If the admission of this testimony did not violate the rights of the plaintiff in error under

the Constitution and the laws of the State of Missouri, then he was awarded due process of law.

Howard vs. Fleming, 191 U. S. 126.

Dryer vs. Illinois, 187 U. S. 71, l. c. 77-78.

II.

Counsel for the plaintiff in error devotes considerable attention to the proposition that some right, privilege or immunity of the plaintiff in error under the Constitution of the United States was violated through the action of the trial court in refusing to grant to the plaintiff in error a change of venue. This contention was dealt with in our original brief.

The record in this case (pp. 664 to 667) shows that the trial court heard the testimony of forty-one witnesses in support of the application for a change of venue, and thirty-seven witnesses who were called by the State in opposition thereto; that after hearing the testimony of those witnesses, the trial court decided that prejudice justifying a change of venue had not been shown by the testimony, and denied the application. As is stated in the decision of this case by the Supreme Court of Missouri (Rec. p. 665):

> "It is now a well settled rule of law in this State that the granting of a change of venue in a criminal case rests largely in the discretion of the trial court, and where the trial court has heard the evidence in favor of and against the application, and a conclusion reached adversely to granting the change, such ruling will not be disturbed by this court, and should not be, unless there are circumstances of such a nature as indicate an abuse of the discretion lodged in such court."

The Supreme Court, after a full review of all this testimony, decided that the trial court had acted properly in overruling the application for a change of venue. To contend that the decision of the trial court and of the Spureme Court of Missouri upon this question presents a Federal question, would be to invoke the doctrine that the Supreme Court of the United States could decide that the trial court had abused its discretion under the laws and the Statutes of the State of Missouri in denying a change of venue, although the Supreme Court of the State of Missouri had held to the contrary.

III.

Counsel for the plaintiff in error contends in his brief (page 12) that counsel for the defendant in error "admit that the plaintiff in error did raise Federal questions" both in the circuit court of St. Louis county and in the Supreme Court of the State, and the different pages in the record are then indicated where it is claimed these Federal questions are shown to have been raised, viz: (Record, pp. 419, 422, 619, 629, 631, 697 and 698.)

Counsel for the plaintiff in error apparently fail to understand our contention in reference to this matter. We do not deny that counsel for plaintiff in error, both in the trial court and the appellate court, claimed that certain rulings and decisions of the trial court and the Supreme Court violated certain provisions of the Federal Constitution. But we do not concede that a Federal question is raised by an assertion in a motion or objection that a provision of the Federal Constitution has been violated when, manifestly, on the face of the record, such a contention is entirely untenable.

The first Federal question claimed to have been raised, viz: Rec. p. 419, is that attempted to be raised by

the application for a change of venue, which has already been referred to.

The Federal question which it is claimed appears to have been raised on page 422 of the printed record, was the general exception saved to the action of the trial court in overruling the application for a change of venue.

The third place in which it is claimed that a Federal question was raised in the trial of this case, viz: Rec. p. 619, contains grounds four to ten of the motion for new trial, in none of which grounds is any reference made to any provision of the Federal Constitution.

The next place in the printed record in which it is claimed that a Federal question was raised, viz: Rec. p. 629, is to be found the judgment of Division No. 2, the division of the Supreme Court of Missouri having jurisdiction of criminal cases, affirming the judgment and decision of the circuit court of St. Louis county, and the beginning of the motion filed by plaintiff in error in Division No. 2 for a transfer of the case to the Court en Banc.

By referring to page 631, printed record, the next page on which it is claimed a Federal question is shown to be raised, appears the order of the court sustaining the motion to transfer the case to the Court en Banc. In the motion to transfer the case from Division No. 2 to the Court en Banc, plaintiff in error claimed that certain Federal questions had been raised in the record and decided adversely. All the Federal questions therein alleged to have been raised in the record have heretofore been referred to. None of these questions were, however, considered or passed upon by the Court en Banc in the decision that it rendered after the case was transferred to it from Division No. 2.

That this motion did not present a Federal question

has already been discussed and referred to in our former brief, pages 8 and 9.

The next place in the record in which it is claimed a Federal question is shown to have been raised, is at pages 697 and 698, printed record, on which pages is to be found a motion for rehearing after the decision of the Court en Banc. In this motion for rehearing, counsel for the plaintiff in error again claimed that certain rights, privileges and immunities secured to him by the Constitution of the United States had been violated. That a Federal question was not raised, although attempted to be raised by this motion, has already been considered.

Our contention in reference to the various efforts that were made by the counsel for the plaintiff in error to raise a Federal question is that such a question is not raised by a mere claim that a certain adverse ruling or decision of the court is in violation of a provision of the Federal Constitution. There must be "some color of right" which is invoked under the provisions of the Federal Constitution before a Federal question can be reasonably said to exist or to have been raised.

New Orleans Waterworks vs. Louisiana, 185 U. S. 336.

Wabash R. R. Co. vs. Flanigan, 192 U. S. 29.

Hughes' Federal Procedure, p. 486.

Allen vs. Georgia, 166 U. S. 140.

Wilson vs. North Carolina, 169 U. S. 586.

Bohanan vs. Nebraska, 125 U. S. 692.

United States vs. McDaniels, 6 Pet. 638.

But even if the record in the case should be thought to show that this Court has jurisdiction, it is manifest that the question on which that jurisdiction depends is

so frivolous as not to need further argument and to justify the conclusion that the writ of error was taken for delay only, and that the judgment of the Supreme Court of Missouri should be affirmed.

IV.

In answer to our contention that this case should be dismissed for the reason that no assignment of errors was returned with the writ of error, as required by section 997, Revised Statutes of the United States, counsel for plaintiff in error contends that under the decisions of this Court in School District of Ackley vs. Hall, 106 U. S. 428, and Gumbel vs. Pitkin, 113 U. S. 546, this Court is not required to dismiss a writ of error for a failure to comply with the provisions of section 997, Revised Statutes. As stated in our original brief, under Rule 21, paragraph 4, it is provided that this Court may, at its option, "notice a plain error not assigned or specified, even where no assignment of errors, as required by section 997, Revised Statutes, has been filed." We contend, however, that no "plain error" appears in the record in this case. Manifestly, if the Court would dismiss a case in which there was no assignment of errors after briefs on the merits had been filed, both for the plaintiff in error and the defendant in error, without a motion to dismiss, the writ of error should be dismissed upon motion for failure to comply with section 997. Clearly it would be imposing no unfair burden upon the plaintiff in error when a motion to dismiss for failure to comply with section 997 is filed to require that he should point out to the Court some "plain error." And failing to do so, he ought not to be heard to contend that the writ of error should not be dismissed.

In the following cases this subject has been considered and the doctrine herein contended for approved.

O'Neill vs. Vermont, 144 U. S. 323.
Rowe vs. Phelps, 152 U. S. 87.
United States vs. Pennsylvania, 170 U. S. 550.

V.

Due notice was served upon the counsel for the plaintiff in error who had appeared for him in the Supreme Court of Missouri, and who had secured the writ of error from that court to the Supreme Court of the United States, that a motion to dismiss or affirm would be submitted to this court on the 25h day of March, 1907. This notice was returned by counsel with the information that he was not an attorney of record in this court and, consequently, was not authorized to accept service of the motion to dismiss. As the time was not sufficient to serve notice upon the counsel for the plaintiff in error in this court for the 25th of March, said notice was served that the motion to dismiss or affirm would be submitted upon April 1, 1907. By reason of the recess taken by the court, this motion was not presented until April 8th. When the first notice was served that the motion to dismiss or affirm would be submitted upon March 25th, a notice was also served that upon that day there would also be submitted a motion to advance this cause for hearing, in case the motion to dismiss or affirm should not be sustained, so that in case the Court desired further argument on the motion to dismiss or affirm, the same could be had in connection with the hearing on the merits.

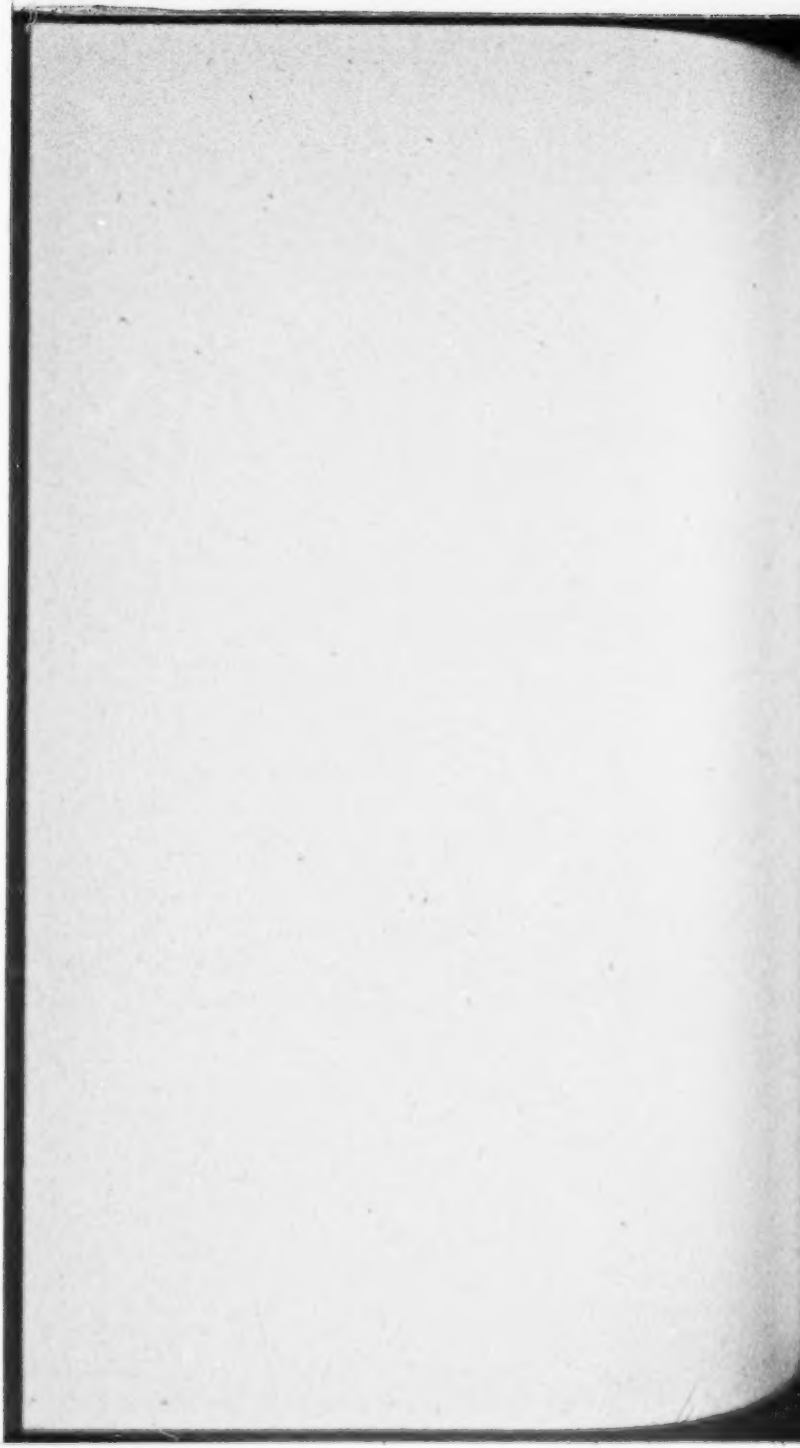
In answer to this motion to advance, which we intended to submit in case the motion to dismiss or affirm should not be granted, counsel for plaintiff in error con-

tend that the case should not be advanced for the reason that the time would be insufficient for a proper preparation for argument.

As the homicide upon which the case against plaintiff in error is based occurred nearly four years ago, counsel for defendant in error are desirous of as speedy a determination of this writ of error as the convenience of the court will permit. We, however, submit this feature of the case without further suggestion or comment.

Respectfully submitted.

HERBERT S. HADLEY, Attorney-General,
JOHN KENNISH, Ass't Attorney-General,
For Defendant in Error.



Supreme Court of the United States.

No. 493.—October Term, 1906.

Frederick Seymour Barrington, Plaintiff in Error, vs. The State of Missouri. } In error to the Supreme Court of the State of Missouri.

[April 22, 1907.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

Plaintiff in error was found guilty of murder in the first degree in the Circuit Court of St. Louis County, Missouri, and, after motions for new trial and in arrest of judgment were made and overruled, judgment was rendered on the verdict and sentence passed accordingly. The case was carried to the Supreme Court of the State and the judgment was affirmed by Division No. 2 of that court, having appellate jurisdiction of criminal cases. No Federal question was referred to in the opinion of the Court. A motion for rehearing was filed, wherein Federal questions were sought to be raised. The court denied the motion without opinion.

Plaintiff in error then moved for the transfer of the cause to the court in banc, setting forth certain Federal questions, and the cause was transferred. The court in banc adopted the opinion of Division No. 2 as its opinion and the judgment was again affirmed. 95 S. W. Rep. 235. A motion for rehearing assuming to raise Federal questions was filed and denied without opinion. This writ of error was thereupon brought and comes before us on motions to dismiss or affirm.

No assignment of errors was returned with the writ as required by section 997 of the Revised Statutes, nor is there in the brief of counsel for plaintiff in error on these motions any specification of errors under Rule 21, but the brief does allege that certain Federal questions were duly raised and so disposed of as to sustain the jurisdiction of this court.

But if these questions are wholly without merit or are no longer open by reason of our previous decisions, it has long been settled that the writ of error should be dismissed.

1. Before the trial of the cause was commenced plaintiff in error applied for a change of venue on the ground of local prejudice.

The application was heard at length, and forty-one witnesses testified in its support and thirty-seven witnesses in opposition thereto; and the trial

court decided that prejudice justifying a change of venue had not been made out, and denied the application. It is now contended that the refusal to grant the change of venue deprived plaintiff in error of a fair and impartial trial, to which, under the Federal Constitution, he was entitled. The State Supreme Court held it to be a well-settled rule of law in Missouri that the granting of a change of venue in a criminal case rested largely in the discretion of the trial court, and that "where the trial court has heard the evidence in favor of and against the application, and a conclusion reached adversely to granting the change, such ruling will not be disturbed by this court, and should not be unless there are circumstances of such a nature as indicates an abuse of the discretion lodged in such court." And the Supreme Court, after a full review of all the testimony, decided that the trial court had acted properly in overruling the application for a change of venue. In our judgment no Federal question was involved. Were this otherwise it would follow that we could decide in any case that the trial court had abused its discretion under the laws of the State of Missouri, although the Supreme Court of that State had held to the contrary.

2. It is also contended that plaintiff in error "set up and claimed that, under the Federal Constitution, as well as under the constitution of Missouri, he could not be compelled to give testimony against himself, and that this exemption and protection were denied to him by the court in permitting to be given in evidence against him alleged extrajudicial admissions extorted from him while under arrest by the police officers of the State." Certain statements made by plaintiff in error, defendant below, were admitted in evidence on the trial, but it does not appear that counsel objected to the introduction of this testimony on the ground that any rights, privileges or immunities of defendant under the Constitution of the United States were thereby violated. Counsel for the State offered in evidence certain articles taken from defendant's trunk, and this was objected to on the ground that they were taken in violation of the State constitution and without defendant's consent. The objection was not passed upon, and the articles were withdrawn. The trunk and its contents were again offered in evidence and objected to, but the objection was based entirely upon the ground of irrelevancy and immateriality and the fact that a proper foundation had not been laid in the identification of the trunk.

When the State offered in evidence the statements made by defendant following his arrest, the trial court excluded the jury and heard the testimony of the persons present at the time for the purpose of determining the competency thereof. After the examination of a number of witnesses, who detailed fully the circumstances under which the statements were made, counsel objected "because there is no foundation laid for it and

because it was [not] voluntary." This objection was overruled and the evidence admitted.

The State Supreme Court held that the trial court in admitting the testimony did not commit error. This notwithstanding the constitution of Missouri provided "That no person shall be compelled to testify against himself in a criminal case." Its ruling upon that proposition is not subject to review in this court.

After the decision of the Supreme Court in banc affirming the judgment, plaintiff in error filed a petition for rehearing which was denied without opinion. The third ground of that motion was as follows: "Because counsel for appellant, through neglect and inadvertence, failed to call the attention of the court to the proposition that the cross examination of appellant complained of as 'improper,' and the admission as evidence of statements or 'confessions' made by appellant while in the 'sweat box' of the St. Louis police department, was in direct violation of the Constitution of the United States, article V, amendments to the Constitution of the United States, in that it compelled the appellant to become a witness against himself." The suggestion came too late, and, moreover, article V of the amendments, alone relied on, does not operate as a "restriction of the powers of the State, but was intended to operate solely upon the Federal Government." *Brown* v. *New Jersey*, 175 U. S. 172. And if, as decided, the admission of this testimony did not violate the rights of the plaintiff in error under the constitution and laws of the State of Missouri, the record affords no basis for holding that he was not awarded due process of law. *Howard* v. *Fleming*, 191 U. S. 126.

3. Plaintiff in error filed a demurrer to the indictment, one of the grounds of which was: "Because of the inconsistency, multiplicity and repugnancy of said counts, the defendant is being proceeded against in violation of the State and Federal guarantee of due process of law and in violation of his constitutional right to be specifically informed of the nature and cause of the accusation against him." The demurrer was overruled. And also a motion to quash, assigning similar grounds, which was likewise overruled.

These rulings in respect of the sufficiency of the indictment present no Federal question. *Howard* v. *Fleming*, 191 U. S. 126, 135, and cases cited.

4. After the demurrer and motion to quash had been disposed of a plea in abatement was filed, averring that the prosecuting attorney intentionally refrained from endorsing the names of certain witnessess on the indictment; that defendant was a native of Great Britain and a subject of the King, and that by virtue of treaties, the law of nations, the laws and Constitution of the United States, and the laws of Missouri, defendant was entitled to know who were the witnesses against him.

A similar point, with like allegations, was made in the motion to quash. The court heard the evidence on the plea in abatement and found the issues against defendant, except that it found that he was a native citizen and subject of Great Britain.

The question of citizenship is immaterial as affecting the jurisdiction of this court under § 709, Rev. Stat. *French* v. *Hopkins*, 124 U. S. 524. Nor are we aware, as Chief Justice Waite said in *Spies* v. *Illinois*, 123 131, 182, of any treaty giving to subjects of Great Britain any different measure of justice than secured to citizens of this country. And the general rule of law is that aliens are subject to the law of the territory where the crime is committed. *Wildenhus's case*, 120 U. S. 1; *Carlisle* v. *United States*, 16 Wall. 147; *People* v. *McLeod*, 1 Hill (N. Y.) 377; Wharton Conflict of Laws, § 819.

As to the allegation that the prosecuting attorney intentionally refrained from endorsing the names of certain witnesses on the indictment in the motion to quash, as well as in the plea in abatement, the State courts held that the charge was not sustained by the evidence.

The right of the accused to the endorsement of names of witnesses does not rest on the common law, but is statutory and provided for in Missouri by section 2517 of the Revised Statutes of 1899, whereby the right of the State to use other witnesses not so endorsed is recognized. The State Supreme Court discussed the matter at length, held there was no error, and added: "Aside from all this it is manifest that the defendant has no right to complain of any prejudicial error upon the action of the court upon this motion. This motion was filed October 6, 1903, and the record discloses upon the showing made upon such motion and plea in abatement that appellant had notice of these additional witnesses which were introduced by the State at the trial. The trial did not occur until the 23d of February, 1904, some three or four months subsequent to the time of which the record discloses that he had notice of these witnesses."

The decision of the Supreme Court that defendant had been tried in accordance with the procedure provided by the statutes of Missouri is not open to revision here in the circumstances.

We have not been astute to apply to these motions the rigor of our rules, and have explored the record with care, but have not found therein any denial of fundamental rights, of due process of law or of the equal protection of the laws. The Federal questions asserted in the brief or suggested by the record are wholly inadequate to justify our interference.

Writ of error dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.